BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 28

In the Matter of:

SUN CAB, INC. D/B/A NELLIS CAB COMPANY,

Respondent,

Case No. 28-CA-079813

and

ABIY AMEDE, an Individual,

Charging Party.

The above-entitled matter came on for hearing pursuant to Notice, before JAY R. POLLACK, Administrative Law Judge, at the National Labor Relations Board located in the Alan Bible Federal Building, at 600 Las Vegas Boulevard South, Suite 400, in Las Vegas, Nevada, on Tuesday, September 25th, 2012.

APPEARANCES

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2		
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4	OII	behalf of the counsel for General Counsel.
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1 2 3	I N D E X						
4 5 6 7 8	WITNESS	DIRECT	CROSS	REDIRECT	RECROSS	VOIR DIRE	CRT EXAM
9 10 11	Jaime Pino	23					
12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30	Abiy Amede	223 262				260	
31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49	OPENING STATEMEN	NT - GENEF	RAL COUNS	SEL		Pa	ge 17

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1		EXHIBITS	
2	EXHIBIT	IDENTIFIED	IN EVIDENCE
4 5			
5 6 7	GENERAL COUNSEL		
8 9	1(a-i)	8	9
10 11	2	34	35
12 13	3	26	27
14 15	5	37	45
16 17	6(a-au)	97	106
18 19	7	52	54
20 21	8 (a-b)	59	60
22 23	10(a-g)	62	77
24 25	11(a-d)	77	86
26 27	12 (a-d)	77	87
28 29	13(a-g)	77	93
30 31	14(a-c)	77	94
32 33	15	77	96
34 35	16	77	96
36 37	17	77	96
38 39	18	77	96
40 41	19	77	96
42 43	20	77	96
44 45	21	77	96
46 47	22	77	96
48 49		(Continued)	

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1 2 3	EXHIBITS (Continued)			
4 5 6	EXHIBIT	<u>IDENTIFIED</u>	IN EVIDENCE	
7 8 9	GENERAL COUNSEL (Contin	ued)		
10 11	23	77	96	
12 13	24	77	96	
14 15	25	77	96	
16 17	26	77	96	
18 19	27	77	96	
20 21	28 (a-o)	127	128	
22 23	29	128	129	
24 25	30 (a-k)	147	154	
26 27	31(a-o)	130	146	
28 29	50	248	249	
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32 33	52	259	262	
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42	63 (a-u)	178	191	
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48 49		(Continued)		
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1 2 3	EXHIBITS (Continued)			
4 5 6	EXHIBIT	IDENTIFIED	IN EVIDENCE	
7 8 9	GENERAL COUNSEL	(Continued)		
10 11	70	201	Rejt ' d	
12 13 14	71(a)	219	222	
15 16	80	208	218	
17 18	81	208	218	
19 20	82	208	218	
21 22	83	208	218	
23 24	84	208	218	
25 26	85	208	218	
27 28 29	86	208	218	
30 31	JOINT			
32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49	1	9	9	

1 PROCEEDINGS

- 2 ADMINISTRATIVE LAW JUDGE POLLACK: On the record, please.
- 3 The hearing will be in order.
- 4 This is a Formal Trial before the National Labor Relations
- 5 Board in Sun Cab, Inc., d/b/a Nellis Cab Company and -- how do
- 6 you pronounce that name?
- 7 MR. SMITH: The Nellis --
- 8 JUDGE POLLACK: No, the individual Charging Party's?
- 9 MR. SMITH: That is Abiy Amede [pronounced A-bee Am-a-
- 10 dee], Your Honor.
- 11 JUDGE POLLACK: Thank you -- Abiy Amede, an Individual,
- 12 Case No. 28-CA-079813.
- 13 The Administrative Law Judge presiding is Jay R. Pollack.
- 14 I am assigned from the San Francisco Office of the Division of
- 15 Judges. Any communications should be addressed to that office,
- 16 and any requests for extensions of time should be addressed to
- 17 the Associate Chief Judge in San Francisco.
- 18 Will Counsel and other representatives of the parties
- 19 please state their appearances for the record?
- 20 MR. SMITH: Your Honor, appearing for Acting General
- 21 Counsel is Larry A. Smith. My address is 600 Las Vegas
- 22 Boulevard South, Las Vegas, Nevada 89101.
- 23 JUDGE POLLACK: And for the Respondent Employer?
- MR. WINKLER: James Winkler of Winkler Mendelson of 3960
- 25 Howard Hughes Parkway, Suite 300, Las Vegas, Nevada 89169-

- 1 5937.
- JUDGE POLLACK: All right, as I stated off the record, I
- 3 worked with Mr. Winkler in Los Angeles from 1971 to 1977. We
- 4 have remained friends, but I otherwise believe I can fairly
- 5 decide the case without bias or prejudice. If anybody wishes
- 6 me to disqualify myself, please state so now.
- 7 MR. SMITH: No thank you, Your Honor.
- 8 MR. WINKLER: No, Your Honor.
- 9 JUDGE POLLACK: Okay. Thank you.
- 10 If settlement discussions are desired at any time during
- 11 the trial, I will grant a reasonable recess for that purpose.
- 12 Trial developments sometimes change attitudes and make
- 13 settlement possible.
- I want you to bear in mind that as the trial proceeds,
- 15 that opportunity for settlement discussions will be available
- 16 at all times upon request.
- 17 Mr. Smith, please introduce the pleadings and other Formal
- 18 Papers. I will dispose of any preliminary motions after those
- 19 are in evidence.
- 20 MR. SMITH: Your Honor, I have previously distributed
- 21 General Counsel's Exhibit No. 1(a) through 1(i), with No. 1(i)
- 22 being the Index and Description of the Formal Documents.
- 23 (General Counsel's Exhibit No. 1(a) through 1(i), marked for
- 24 identification.)
- 25 JUDGE POLLACK: Any objection?

- 1 MR. WINKLER: No objection, Your Honor.
- JUDGE POLLACK: Thank you.
- 3 General Counsel's Exhibit No. 1(a) through 1(i) are
- 4 received.
- 5 (General Counsel's Exhibit No. 1(a) through 1(i), received into
- 6 evidence.)
- JUDGE POLLACK: Mr. Smith, any motions?
- 8 MR. SMITH: Your Honor, I would, as a preliminary matter,
- 9 I have passed out a Joint Exhibit, which rather than doing a
- 10 Notice of Intent to Amend, is a correction -- a corrected list
- of suspended drivers for General Counsel's Exhibit No. 1(e),
- 12 Paragraph 5(a). At the time the Complaint issued, it was not
- 13 known the complete names of several of the drivers in that
- 14 paragraph.
- 15 (Joint Exhibit No. 1, marked for identification.)
- 16 JUDGE POLLACK: Okay.
- 17 Mr. Winkler, you signed it so I assume you have no
- 18 objections?
- 19 MR. WINKLER: It is a joint exhibit, Your Honor.
- 20 JUDGE POLLACK: Thank you.
- Joint Exhibit No. 1 is received.
- 22 (Joint Exhibit No. 1, received into evidence.)
- 23 MR. SMITH: And for -- thank you, Your Honor.
- 24 For other motions, I would like to exclude witnesses,
- 25 whether we do that before or after opening statement, but I

- 1 would like to --
- JUDGE POLLACK: Okay.
- 3 MR. SMITH: -- move to exclude --
- 4 JUDGE POLLACK: As you know, I must grant that motion, but
- 5 each party would be entitled to one individual to assist
- 6 Counsel, who would not be subject to the rule.
- 7 MR. WINKLER: Right, and that would be Jaime Pino who is
- 8 sitting to my left. There is another person in the room named
- 9 Sandy Pineda who is -- if there is any issues with the subpoena
- 10 or documents, that we want -- that is going to be addressed
- 11 now, she might assist us -- we don't intend to call her as a
- 12 witness, but she might be called as a witness to authenticate
- 13 documents, so we would have her excluded from the sequestration
- 14 rule, however if there are any issues that you want to address
- 15 now with the subpoenaed documents, it would be helpful to have
- 16 her in the room in case something comes up.
- JUDGE POLLACK: Okay, thank you.
- 18 MR. SMITH: And I do believe that there are some issues
- 19 that we will need to discuss probably off the record about the
- 20 subpoena to try to figure out -- I see you have brought some
- 21 more documents today.
- 22 MR. WINKLER: We have no more documents pursuant to the
- 23 subpoena at this time. What we have, we gave to you in the
- 24 course of Friday and twice yesterday.
- MR. SMITH: Okay, and then there would be the one issue,

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- 1 and I know we discussed that yesterday, regarding Subpoena Item
- 2 No. 9, which in that request it was the productivity logs, and
- 3 I'm sorry, I will have to go grab the files, if I could have a
- 4 moment off the record, Your Honor --
- 5 JUDGE POLLACK: Off the record, please.
- 6 MR. SMITH: Thank you, Your Honor.
- 7 [Off the record]
- 8 JUDGE POLLACK: Back on the record.
- 9 MR. SMITH: And, Your Honor, Mr. Winkler did provide many
- 10 of the documents and provided many of them early, which like I
- 11 stated on the record, I do appreciate.
- 12 We had discussed, though, Subpoena Item No. 9 which is an
- 13 issue of concern, and that is copies of low productivity
- 14 discipline issued to drivers, including the corresponding trip
- 15 sheets, and the GPS log for low productivity discipline. And,
- 16 to date, I don't believe we have received anything that is
- 17 responsive to that request other than what came in with some of
- 18 the other requests, so it is very hit and miss, and this is one
- 19 of the issues that I believe will be very relevant to the case,
- 20 as far as being able to compare discipline that was issued, and
- 21 I would like to see if we can get those produced. I understand
- 22 that there are some difficulties that Respondent ran into with
- 23 the --
- MR. WINKLER: Well, first of all, I am not sure that it
- 25 will be an issue. The Charging Party was terminated. The

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- 1 reason given for the termination is high frequency of
- 2 accidents, and we gave a list during the investigation and we
- 3 gave an updated list during the subpoena, a list of drivers
- 4 terminated from January 1, 2012, to the end of July, and
- 5 showing that there is a number of people that -- well, compared
- 6 to the other people that were terminated for accidents, he is
- 7 comparable to those people.
- 8 There was another list of people that had accidents that
- 9 were still employed, and to distinguish, you know, why he was
- 10 chosen for discharge along with others, versus those that were
- 11 not, we did point out that some of the others had -- well, to
- 12 put it -- certain redeeming qualities, high productivity, and
- 13 that type of issue, and -- and we pointed out that Mr. Amebe
- 14 had two real bad months prior to his discharge in productivity,
- 15 and so it wasn't a reason for the discharge, but unlike some
- 16 others, he didn't have any redeeming qualities, and that was an
- 17 example of such.
- 18 Now, we have given those -- those low-productivity
- 19 records for July -- well, for January, February, March, April,
- 20 May, June, and July of 2012. Now, each one of those low
- 21 productivity records for that particular month would have all
- 22 of the employees employed in that month, and their productivity
- 23 for that month, and for the last eleven months prior, for the
- 24 entire twelve months, so it would go back showing their
- 25 productivity. The reason we gave it for each month was because

- 1 if somebody was terminated in February, they wouldn't show up
- 2 in the March, April, May, June, and July, so in going all the
- 3 way back to January, we have a productivity report showing low
- 4 productivity.
- 5 Nellis Cab has about 500 drivers, and to try to figure --
- 6 and again, this person wasn't discharged for low productivity,
- 7 so I am not sure if the requested documents are even relevant,
- 8 but in any event, to go back and try to find out if there is
- 9 any discipline or warnings of any kind for productivity
- 10 involved in this would mean going through about 500 personnel
- 11 files, and that is an issue that we had with a number of those
- 12 subpoenaed documents, but we got it as best as we could in the
- 13 time allotted.
- Now, you know, we could go back over each file and try to
- 15 pull them out, but to be very candid, we didn't have the time
- 16 and the manpower to do it, and -- in the time involved, so if
- 17 there was a request for a continuance for a couple of months to
- 18 go through all of these things, but I just don't think it is
- 19 worth it, and I don't think it is germane to the -- to the
- 20 proceeding.
- 21 Nevertheless, with all of these documents, we have tried
- 22 to comply and get as much of this information as we can in the
- 23 time period.
- JUDGE POLLACK: Okay.
- MR. SMITH: Your Honor, may I respond to that?

- 1 JUDGE POLLACK: Yes.
- 2 MR. SMITH: The -- understanding that Counsel doesn't
- 3 really know all of the theories that General Counsel will be
- 4 presenting his case in, we are looking at, in this case, long
- 5 breaks, and I believe that Counsel understands that I would be
- 6 looking for these documents for the discharge of Mr. Amede, but
- 7 that is not my focus with these documents.
- 8 In this we have got an issue of long breaks, and the
- 9 drivers are measured every day on productivity, and long breaks
- 10 should show up as a low productivity that would be disciplined
- 11 for. So, a -- and then with that low productivity, there is
- 12 other things that go with it. There is low productivity on the
- 13 trip sheet where the drivers log their trips, and a GPS log
- 14 that shows where they were at. So, without those documents, it
- 15 is kind of hard to show whether or not Respondent ever looked
- 16 at long breaks at all, without having -- and the low
- 17 productivity is the most focused way to try to find that,
- 18 rather than trying to get every single trip sheet and every
- 19 single log that Respondent has used. This was a target of
- 20 looking at low productivity and the corresponding sheets that
- 21 go with that, to see whether or not Respondent ever looked at
- 22 long breaks at all before this break, and this subpoena was
- 23 served -- it was almost three weeks, and like I said, to Mr.
- 24 Winkler's credit, he has delivered documents, but for this
- 25 item, there has not been one document in response other than

- 1 something that came in hit and miss with responding to the
- 2 other items.
- JUDGE POLLACK: Well, I thought the issue there was
- 4 whether the conduct was protected or not.
- 5 MR. SMITH: I think there is also an issue of whether it
- 6 is disparate treatment, so one of the things that comes into
- 7 play is also if -- if the conduct is protected, were they
- 8 treated differently than other drivers, and I do believe that
- 9 that is the case.
- 10 MR. WINKLER: Well, first of all, in response to one of
- 11 the subpoenaed items asking for discipline for taking extended
- 12 breaks, we know of no other, other than this one incident. We
- 13 don't know of anybody else ever taking any more than one hour
- 14 for lunch. As a matter of fact, the lunches are mandatory
- 15 lunch hours, however, to be very candid, I think most drivers,
- 16 a lot of drivers, probably work while they are eating, and we
- 17 don't know of any other time where there has been extended
- 18 breaks, and we have never issued any complaint -- excuse me,
- 19 discipline that we know of -- we don't know of any discipline
- 20 for extended breaks. These employees -- the more money they
- 21 make during a shift, the more money they make, so extended
- 22 breaks are very uncommon.
- 23 JUDGE POLLACK: All right. I don't want to delay the
- 24 hearing any further.
- 25 MR. SMITH: Could I offer possibly a stipulation to

- 1 possibly get us through this, Your Honor?
- JUDGE POLLACK: Okay, try.
- 3 MR. SMITH: I would like to see if Respondent would be
- 4 willing to stipulate that it doesn't look for long breaks,
- 5 other than if it shows up in a low productivity.
- 6 MR. WINKLER: I am not sure I am going to stipulate to
- 7 that. It -- no, because they don't look for long breaks even
- 8 in low productivity. They just look at low productivity.
- 9 MR. SMITH: And I think that would actually be even an
- 10 easier stipulation that they look just at productivity and they
- 11 don't look at the long breaks, if I understood you correctly.
- 12 MR. WINKLER: Because there are no long breaks.
- I mean -- so it is the wording of your stipulation that I
- 14 have most of the trouble with. It assumes certain things that
- 15 are not accurate.
- 16 MR. SMITH: And if need be I will just handle it through
- 17 the witness and we can move on past this, Your Honor.
- JUDGE POLLACK: Okay. All right, and I am just going to
- 19 accept what Mr. Winkler has offered, and not further require
- 20 the production of any further documents. If trial developments
- 21 change that, then of course, I can revisit it, but I would like
- 22 to proceed now.
- MR. SMITH: Thank you, Your Honor.
- JUDGE POLLACK: All right, do you have any other motions
- 25 or stipulations?

- 1 MR. SMITH: No, Your Honor.
- JUDGE POLLACK: Mr. Winkler?
- 3 MR. WINKLER: No, Your Honor.
- 4 MR. SMITH: If we may have a moment off the record, Your
- 5 Honor?
- 6 JUDGE POLLACK: Off the record, please.
- 7 [Off the record]
- JUDGE POLLACK: Back on the record, please.
- 9 MR. SMITH: And, Your Honor, if we could do Opening
- 10 Statements, please?
- 11 JUDGE POLLACK: Brief. Go ahead.

12 **OPENING STATEMENT - GENERAL COUNSEL**

- 13 MR. SMITH: Your Honor, we have an interesting issue in
- 14 this case, in that we have taxi drivers who went on strike by
- 15 way of an extended break. The taxi drivers across several cab
- 16 companies in Las Vegas, including some from Respondent, took
- 17 this long break on Super Bowl weekend, to express their
- 18 opposition to increased numbers of cabs in Las Vegas. An
- 19 increase in the number of cabs was advocated by some of the
- 20 sixteen cab companies in Las Vegas, including respondent. In
- 21 this case, we address the retaliation by Respondent against its
- 22 drivers who participated, but the movement was actually much
- 23 larger than the drivers involved here.
- To understand why this was so important to Las Vegas cab
- 25 drivers requires some explanation.

1 There are sixteen taxi companies authorized by the Taxi

2 Authority or the TA, to operate in Las Vegas through what are

3 called certificates and medallions. Certificates allow the

4 taxi company to operate while each medallion issued by the TA

5 allows the certificated company to operate a cab during certain

6 geographic areas and times, depending on the type of medallion.

7 The number of medallions determines the number of cabs on the

8 road.

9 In early 2012, the TA was considering whether to issue

10 more medallions to the taxicab companies. Several companies,

11 including Respondent, desired additional medallions so that

12 they could operate more cabs. Many drivers across many

13 different cab companies, were very much opposed to this

14 addition of medallions and the corresponding cabs in Las Vegas

15 because it would hurt their income. This setting is the

16 background of this case.

17 The call for additional medallions brought about a

18 dramatic response. The Las Vegas taxi drivers across many

19 companies staged an organized long break during their shift on

20 Saturday, February 4th, the day before Super Bowl Sunday. On

21 that Saturday, many, many drivers took their cabs out of

22 service for a period of time. Many met at local restaurants

23 with drivers from across the different companies and discussed

24 the issues which were currently affecting them. Many drivers

25 after meeting and discussing, traveled to Las Vegas Boulevard,

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- 1 and drove up and down the Strip, some with hazard lights
- 2 flashing and some honking their horns. Las Vegas Boulevard was
- 3 full of cabs from many companies, cruising down the Strip,
- 4 making their statement. Once the organized break was over, the
- 5 cab drivers started picking up customers.
- This was a one-time organized strike, which did not have
- 7 any of the indicia which makes it an unprotected work slow-down
- 8 or sit-down strike.
- 9 Without giving away what those indicia are, I will be
- 10 covering those indicia through the examination of the
- 11 witnesses.
- 12 Briefly, taxi driving is a rough job. The drivers work
- 13 twelve hours a day and do not make much money. They are paid
- 14 based on a split of the fees with their employer, but that is
- 15 not the whole story. Their employer does not pay for gas, at
- 16 least not all of it. The drivers pay for the gas up front out
- 17 of their fares, and the Respondent claims it pays half of the
- 18 cost back to the drivers. However, the drivers have no
- 19 itemized way to verify the amounts paid back to them in gas.
- 20 Further, the drivers pay a trip charge for each fare the
- 21 driver takes. Thus, the drivers' shares of the fares is
- 22 considerably less than the fifty percent of the total fares,
- 23 considering they pay for at least half of the gas and also pay
- 24 the trip fee.
- Documents provided by subpoena will show that Respondent's

- 1 drivers, at least for some days' fares, make less than minimum
- 2 wage. With this fee split in mind, the possible addition of
- 3 more cabs in Las Vegas would only hurt the income of the
- 4 drivers. This explains the drivers' collective frustration
- 5 with Respondent, the other employers, and the TA, for
- 6 considering the addition of more cabs. Additionally, drivers
- 7 under -- are already under intense competitive pressure.
- 8 The drivers' productivity is measured and compared to that
- 9 of the other drivers on their shift. Productivity is also
- 10 called "book." If the drivers do not make within a certain
- 11 amount of the average book for their shift, then they are given
- 12 a low book warning. Book or fares is king. That is what cab
- 13 companies like Respondent are in business to do, to make money.
- 14 And of all of the documents that Respondent will provide, those
- 15 which address book will be the most organized and the most
- 16 plentiful, which is further evidence of the importance of
- 17 productivity.
- 18 Although the strike was unique, the struggle of
- 19 Respondent's drivers did not end there. As a result of the
- 20 discipline issued to the seventeen drivers that participated,
- 21 the drivers sought Union representation. The Union sent an
- 22 organizing letter to Respondent identifying the organizers,
- 23 including Abiy Amede, one of the seventeen who were suspended
- 24 as a part of the long break.
- 25 A special TA meeting was held on February 28th to address

- 1 the addition of the medallions. In this meeting which is open
- 2 to the public and normally held at the TA offices had to be
- 3 moved to Cashman Field, an area with a baseball diamond and a
- 4 convention center, in order to accommodate the expected
- 5 turnout. That accommodation was insufficient as there were too
- 6 many attendees. The meeting was very emotional and had to be
- 7 stopped several times, and on one side of the meeting was
- 8 Respondent's Manager, Mr. Pino, who was speaking in favor of
- 9 additional medallions. On the other was Abiy Amede, who
- 10 identified himself as a Nellis Cab driver and spoke up against
- 11 additional medallions, and afterward, Abiy Amede continued to
- 12 organize Respondent's drivers.
- On April 18th, he approached Nellis drivers on his day off
- 14 at the airport for the Union. Two days later, he was involved
- 15 in a minor accident. He was sent home and subsequently fired
- 16 before returning to work -- he did not return to work. He was
- 17 fired before he could.
- 18 The Respondent claimed that he was fired because of a new
- 19 accident policy which was implemented because of rising
- 20 insurance costs; a new policy where they would terminate
- 21 drivers based on frequency of accidents.
- 22 Respondent will offer evidence regarding their costs,
- 23 however, they will not be able to avoid the evidence which
- 24 shows that there was no such policy. This includes the lack of
- 25 communication to its drivers of any new policies, the lack of

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- 1 documentation of any new policy, and the recent preceding
- 2 policy which was inconsistent with this claim.
- 3 Respondent is likely to claim several justifications for
- 4 its actions, including a claimed loss of production during the
- 5 strike, a claimed rise in insurance costs which allegedly
- 6 motivated its actions, and possibly falsification of records.
- 7 However, testimony will show that these are not the real
- 8 reasons Respondent acted.
- 9 At the end of this hearing, it will be shown that the
- 10 drivers engaged in a one-time organized strike and did not
- 11 commit any actions which took that strike out of the protection
- 12 of the Act.
- The list of witnesses is expected to be fairly short, with
- 14 most of the evidence being introduced through two main
- 15 witnesses. The first witness will provide the most testimony,
- 16 will provide the necessary background of these issues, and most
- 17 of the facts involved in this case. The remainder of the
- 18 witnesses will likely be providing much smaller details, and
- 19 will be offered primarily for detail and credibility
- 20 revolution.
- 21 Thank you, Your Honor.
- JUDGE POLLACK: How long was this strike?
- 23 MR. SMITH: It was hours, part of a shift. I believe it
- 24 was between two and three hours.
- 25 JUDGE POLLACK: Okay.

- 1 Mr. Winkler, do you want to make a statement now or wait
- 2 until your case?
- MR. WINKLER: I will wait until my case.
- 4 JUDGE POLLACK: Okay, thank you.
- 5 All right, Mr. Smith, let's proceed with the first witness
- 6 then.
- 7 MR. SMITH: Yes, Your Honor. I would like to call Mr.
- 8 Pino.
- 9 Whereupon,
- 10 JAIME PINO,
- 11 having been sworn, was called as a witness herein, and was
- 12 examined and testified, as follows:
- JUDGE POLLACK: Please be seated.
- 14 Please give your name and address for the record.
- 15 THE WITNESS: Jaime Pino, Director of Operations for
- 16 Nellis Cab; 5490 Cameron Street, Las Vegas, Nevada 89118.
- 17 JUDGE POLLACK: Thank you.
- 18 DIRECT EXAMINATION
- 19 Q BY MR. SMITH: Good morning, Mr. Pino.
- 20 A Good morning.
- 21 Q As Director of Operations, what are your duties?
- 22 A I am in charge of hiring, firing, scheduling, supervising
- 23 the eight supervisor that I have; some of them are in the
- 24 office and some on the road. Also, I am part of -- involved
- 25 with the safety classes for the Company. I also oversee the

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- 1 Dispatch Room, which is about eight, and I deal on a daily
- 2 basis with around 380 drivers on a daily basis. If anybody
- 3 wants to talk to me or whatever, I talk to them every day. I
- 4 have an open door policy.
- 5 Q And who do you report to?
- 6 A I report to Michelle Languille, General Manager.
- 7 Q Can you spell that last name, please?
- 8 A L-a-n-g-u-i-l-l-e.
- 9 Q Thank you.
- 10 MR. SMITH: And, Your Honor, I wish to proceed under Rule
- 11 6.11(c) when appropriate.
- 12 JUDGE POLLACK: All right.
- 13 MR. SMITH: Thank you, Your Honor.
- 14 Q BY MR. SMITH: Mr. Pino, how many cabs does Nellis
- 15 operate?
- 16 A How many medallions or cabs?
- 17 Q Well, we will get into that. I guess the more appropriate
- 18 question would probably be medallions.
- 19 A We have -- I can break them down for you to make it easy.
- We have 88, 24/7. We have 23 time-restricted cabs, 12:00
- 21 noon to 12:00 midnight. We have 11 that are 2:00 p.m. to 2:00
- 22 a.m., Thursday, Friday, Saturday, and Sunday; they go around
- 23 the clock. And, I have 12 geo-restricted medallions, 24/7, and
- 24 I also have three south medallions, they can only pick up south
- 25 of Las Vegas -- I mean, south of Sunset.

- 1 Q Okay, and how many -- when you said the 88, 24/7, that is
- 2 88 medallions that allow a cab to operate 24 hours a day, seven
- 3 days a week?
- 4 A Yes.
- 5 Q And how many cabs does Nellis have, whether it is owned or
- 6 leased?
- 7 A We -- right now, we are around 171.
- 8 Q And does Nellis own or lease those cabs?
- 9 A We own them.
- 10 Q And do you know about how many cabs you bought -- that
- 11 Nellis bought in 2012?
- 12 I'm sorry, from let's say May of 2011 until May 2012, how
- 13 many were bought?
- 14 A I couldn't give you an exact amount. Maybe ten or eleven.
- 15 Q And none of those cabs were made in Nevada, were they?
- 16 A I have no idea where they were made.
- 17 Q Okay. Now, I want to cover some basics.
- 18 There are sixteen cab companies that operate in Las Vegas;
- 19 is that correct?
- 20 A Yes, sir.
- 21 Q And with sixteen cab companies operating in this area, the
- 22 business is very competitive, isn't it?
- 23 A It is; that's correct.
- 24 Q And each one of these companies has to have a certificate
- 25 to operate; is that right?

- 1 A That is correct.
- 2 Q And the certificate is granted by the Taxicab Authority?
- 3 A That's correct.
- 4 Q And that is commonly called the TA?
- 5 A Yes, sir.
- 6 Q And the TA also gives a certain number of medallions to
- 7 those certificated companies; is that right?
- 8 A That's correct.
- 9 MR. SMITH: I am going to hand out what is marked as
- 10 General Counsel's Exhibit No. 3.
- 11 (General Counsel's Exhibit No. 3, marked for identification.)
- 12 Q BY MR. SMITH: Mr. Pino, have you seen a list like this
- 13 before from the Taxicab Authority?
- 14 A Yes, I have.
- 15 Q And does this represent the types of medallions that the
- 16 TA can issue?
- 17 A That's correct.
- 18 Q And I believe you already spoke about the types of
- 19 medallions that you have at Nellis?
- 20 A Yes.
- 21 Q Do you see any of the medallions that you have at Nellis
- 22 that are not covered on this list?
- 23 A Can you repeat?
- 24 Q You covered the different types of medallions that Nellis
- 25 has. Are there any types of medallions that Nellis operates

- 1 with that are not included in this list?
- 2 A No, my medallions -- I mean, Nellis Cab medallions are
- 3 included in this list.
- 4 MR. SMITH: Your Honor, I would like to offer General
- 5 Counsel's Exhibit No. 3.
- 6 JUDGE POLLACK: Any objection?
- 7 MR. WINKLER: No objection.
- 8 JUDGE POLLACK: General Counsel's Exhibit No. 3 is
- 9 received.
- 10 (General Counsel's Exhibit No. 3, received into evidence.)
- 11 MR. SMITH: Thank you, Your Honor.
- 12 Q BY MR. SMITH: Now, each cab that is out on the road has a
- 13 medallion fastened to the cab; is that right?
- 14 A That's correct.
- 15 Q And the medallion usually stays with that cab unless there
- 16 is a need to move it to another cab; is that right?
- 17 A That's correct.
- 18 Q There was an issue earlier this year about the TA
- 19 considering the issuing of new medallions; is that right?
- 20 A Yes.
- 21 Q And the TA held a meeting at the end of February where it
- 22 was considering awarding more medallions; is that right?
- 23 A That is correct.
- 24 Q And you attended that meeting?
- 25 A Yes, sir.

- 1 Q And does February 28th sound like the right date for that
- 2 meeting?
- 3 A I am pretty sure.
- 4 Q And the TA Board conducts the meets the meetings; is that
- 5 right?
- 6 A Yes.
- 7 Q And they provide a microphone to persons to appear and
- 8 speak for a limited amount of time?
- 9 A If you are referring to public comment, yes.
- 10 Q Oh, okay, so for public comment, that is where they
- 11 provide the microphones for comment?
- 12 A And also for the interveners.
- 13 Q And -- thank you.
- Normally, the meetings are held at the TA office; is that
- 15 right?
- 16 A That is correct.
- 17 Q And you mentioned interveners; what do you mean by
- 18 interveners?
- 19 A Interveners is anybody who has an interest in the taxi
- 20 industry, and they can intervene in the agenda items that are
- 21 listed for that particular meeting.
- 22 Q So, would Nellis Cab, would they be considered an
- 23 intervener?
- 24 A Yes, we are.
- 25 Q Thank you.

- Other than the cab companies, what other kinds of groups
- 2 could be interveners, that you know of?
- 3 A The unions that represent the three biggest companies in
- 4 town, which is Yellow-Checker-Star, Frias Group, and
- 5 Whittlesea.
- 6 Q Okay, and those are -- I'm sorry, but you started getting
- 7 into individual cab companies, right?
- 8 A No, that is all one company. It is just they have -- they
- 9 are under one company.
- 10 Q All right, sorry.
- 11 So, other than cab companies and unions, is there anybody
- 12 else that you can think of that are interveners?
- 13 A They -- there are times when somebody might have an
- 14 interest in the taxi industry. It could be more than one. It
- 15 could be different types of people.
- 16 Q This -- this February 28th meeting, this was held at
- 17 Cashman Field; is that right?
- 18 A Yes.
- 19 O And Cashman Field is an area where -- with a baseball
- 20 field and conference center?
- 21 A Yes.
- 22 Q And do you remember, did the TA announce that the meeting
- 23 was moved because of the expected turnout?
- 24 A All I got was the agenda. There was no notification to me
- 25 that the -- that it was moved there.

- 1 Q Okay, the meeting room that they had this in, it wasn't
- 2 big enough to fit everybody that showed up, was it?
- 3 A That particular meeting, no.
- 4 Q So there were people waiting outside because they couldn't
- 5 get in?
- 6 A At Cashman Field?
- 7 Q Yeah, the meeting that was held at Cashman Field, there
- 8 were people that were waiting outside?
- 9 A I couldn't tell you that. I don't know.
- 10 Q Now, for this meeting, Nellis Cab wanted more medallions;
- 11 is that right?
- 12 A That is correct.
- 13 Q And you spoke at that meeting for Nellis, didn't you?
- 14 A Yes, I did.
- 15 Q And I believe you said that Nellis supported Whittlesea,
- 16 which is another cab company that had wanted medallions; is
- 17 that right?
- 18 A I don't recall saying that I supported Whittlesea. I
- 19 presented my own case.
- 20 Q Okay, and that was for more medallions?
- 21 A For more medallions.
- 22 Q And do you remember saying that the crowd had to remember
- 23 that this is a country of laws and not of men?
- 24 A I did say that.
- 25 Q How did the crowd react to that?

- 1 A They went crazy.
- 2 Q Okay, and did the meeting go into recess because of that?
- 3 A Well, yes, that particular time, and a lot of other times.
- 4 Q So, it was a very -- you said a lot of times. Do you
- 5 remember about how many times the meeting had to be recessed?
- 6 A Well, the Board walked out of their for their own safety.
- 7 They walked out of there about three or four times, off the
- 8 stage.
- 9 Q And that was because of the reaction of the crowd?
- 10 A That's correct.
- 11 Q Now, you said they left for their own safety. Was there
- 12 any violence at this meeting?
- 13 A Well, people were screaming, people were shoving. I guess
- 14 it was on the news. I didn't see it, but I can tell you -- I
- 15 felt for my safety.
- 16 Q Did anybody attack you?
- 17 A No, but there was a lot of obscene and threats and vulgar
- 18 language used, not just against me, but against everybody that
- 19 was there; the Board. There was a threat from a -- I can't
- 20 remember the name of the person, but he said that he will not
- 21 be -- I remember very well, because that is one of the times
- 22 the Board walked out of there. He won't stop until he kills
- 23 all of the cab owners. That is on the record and that is on
- 24 the news. On the minutes.
- 25 Q Okay. And so there were a lot of these people that were

- 1 there. They were cab drivers, did you know?
- 2 A Yes.
- 3 Q The -- the guy that threatened to kill people, did you
- 4 know that he worked for Nellis?
- 5 A He didn't work for me, no. Definitely not.
- 6 Q And were there drivers that came and spoke up against
- 7 medallions at this meeting?
- 8 A Yes, there were. Many of them.
- 9 Q And Abiy Amede, he is a driver for Nellis; is that right?
- 10 A Yes, he was.
- 11 Q Or, I'm sorry, was -- was a driver?
- 12 A Yes.
- 13 Q He spoke up at the meeting, didn't he?
- 14 A I don't recall him. There were so many of them.
- 15 Q Would it refresh your recollection if I played a part of
- 16 the meeting?
- 17 A I don't think so. I don't think so because I don't even
- 18 remember his voice.
- 19 Q So if I played a recording that had the voice on it, do
- 20 you think you would --
- 21 A Unless he said he is a Nellis driver, yeah.
- 22 Q So, would --
- 23 A That would be the only thing that I would recognize him.
- MR. SMITH: Your Honor, if I could have a moment?
- 25 JUDGE POLLACK: Off the record.

- 1 [Off the record]
- JUDGE POLLACK: Back on the record, please?
- 3 Q BY MR. SMITH: Now, I just played off of the record some
- 4 of the recording from the TA meeting. Was that enough for you
- 5 to remember --
- 6 A Well, if he said that he was from Nellis Cab, if he was
- 7 there.
- 8 Q Do you recognize that voice?
- 9 A No, I don't.
- 10 Q Okay. Do you remember any drivers speaking from Nellis
- 11 Cab?
- 12 A I really -- it was so loud, I wasn't even paying
- 13 attention. I don't remember anybody -- now that you says --
- 14 that he says he was from Nellis Cab, he probably was there.
- 15 Q And -- okay.
- 16 [Long pause]
- 17 MR. WINKLER: You know, for the record, I don't know if we
- 18 had a stipulation on it, but I -- just for the record, I
- 19 couldn't understand the name when he presented his name.
- 20 THE WITNESS: I only understood Nellis Cab, so if he says
- 21 Nellis Cab, then obviously he worked for Nellis Cab.
- 22 O BY MR. SMITH: But you don't remember whether or not you
- 23 heard you heard him at the time?
- 24 A No, I -- I was more -- more worried about my safety at the
- 25 time than thinking about what this guy was saying.

- 1 MR. SMITH: Could I have a moment off the record, Your
- 2 Honor?
- JUDGE POLLACK: Off the record, please.
- 4 [Off the record]
- 5 JUDGE POLLACK: Back on the record.
- 6 Q BY MR. SMITH: So, I want to cover some basics of taxi
- 7 operations at Nellis.
- Nellis uses an employee handbook, doesn't it?
- 9 A Yes.
- 10 MR. SMITH: I am going to be handing out what is
- 11 identified as General Counsel's Exhibit No. 2.
- 12 (General Counsel's Exhibit No. 2, marked for identification.)
- 13 Q BY MR. SMITH: Is this, General Counsel's Exhibit No. 2,
- 14 is that representative of the Employee Handbook currently in
- 15 use?
- 16 A I am pretty sure it is. I haven't looked at it page by
- 17 page, but I am pretty sure it is.
- 18 Q Okay, and this -- the Handbook has been amended several
- 19 times, hasn't it?
- 20 A Yes.
- 21 Q And those amendments don't necessarily show up in the
- 22 Handbook itself. They are individual sheets; is that right?
- 23 A They are individual sheets given to the drivers, signed by
- 24 the drivers, put in their files, but eventually when we print
- 25 new books, they are put in there, when we print new books.

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- 1 Q So, from the time that this was printed in August of 2011,
- 2 it has been amended since then and -- is that right?
- 3 A Yes, most likely.
- 4 Q I'm sorry, I didn't mean to cut you off.
- 5 A Most likely it has been amended. Whether we printed books
- 6 from August of 2011, I am not sure. I am not really -- I have
- 7 other people doing it.
- 8 Q But I mean any amendments, you said will -- they will get
- 9 signed by the drivers and put in their files. Any of those
- 10 amendments, if they were after this printing, they wouldn't
- 11 show up in here; is that right?
- 12 A That is -- that is right.
- 13 Q Thank you.
- And I will be referencing the Employee Handbook
- 15 periodically.
- 16 MR. SMITH: I would like to offer General Counsel's
- 17 Exhibit No. 2.
- 18 JUDGE POLLACK: Any objection?
- 19 MR. WINKLER: No objection.
- 20 JUDGE POLLACK: Thank you.
- 21 General Counsel's Exhibit No. 2 is received.
- 22 (General Counsel's Exhibit No. 2, received into evidence.)
- MR. SMITH: Thank you, Your Honor.
- 24 Q BY MR. SMITH: Now, we have covered some questions about
- 25 trip sheets.

- 1 Trip sheets are filled out by a driver every shift where
- 2 they document their rides; is that right?
- 3 A That is correct.
- 4 MR. SMITH: I am going to hand out a -- well --
- 5 Q BY MR. SMITH: And a trip sheet is actually required to be
- 6 filled out by the TA; is that right?
- 7 A Well, by the NAC and NRS's.
- 8 Q And what do you mean by NAC and NRS?
- 9 A Well, the TA has laws that they go by and every driver is
- 10 given an NAC -- Nevada Revised Statutes, so they can -- so they
- 11 know this is regulated in the street and they need to follow
- 12 the law.
- 13 MR. WINKLER: I think we can get a stipulation that NRS
- 14 stands for Nevada Revised Statutes, and NAC stands for Nevada
- 15 Administrative Code.
- 16 THE WITNESS: Administrative Code, yes.
- 17 MR. SMITH: I will stipulate to that, Your Honor.
- 18 JUDGE POLLACK: Okay, thank you.
- 19 MR. SMITH: Thank you.
- 20 Q BY MR. SMITH: And the NAC and NRS, that is what guides
- 21 the Taxi Authority?
- 22 A Yes.
- 23 Q And the TA requires basic information such as -- and I
- 24 will just go through these one at a time and you can tell me
- 25 "Yes" or "No."

- 1 Do they require a pick-up location?
- 2 A Yes.
- 3 Q And times of the pick-up?
- 4 A Yes.
- 5 Q And drop-off location?
- 6 A Yes.
- 7 Q And the amount of fare?
- 8 A Yes.
- 9 Q And if the TA inspects --
- 10 MR. SMITH: Maybe it would be helpful if I go ahead and
- 11 hand this out now.
- 12 (General Counsel's Exhibit No. 5, marked for identification.)
- 13 Q BY MR. SMITH: Now, General Counsel's Exhibit No. 5, is
- 14 that representative of a trip sheet?
- 15 A Yes. Yes, this is a trip sheet. Yes.
- 16 Q Okay, so just so we cover what we are looking at, if the
- 17 sheet is turned sideways, like this, this is the drivers'
- 18 information with the name and the cab number, then; is that
- 19 right?
- 20 A That is correct.
- 21 Q And then we have got the date up in the upper right-hand
- 22 corner?
- 23 A That's correct.
- 24 Q But then there is also usually a time stamp, both at the
- 25 beginning and at the end of the shift, down at the bottom.

- 1 A On this sheet.
- 2 Q Okay, and then going down the list, you have got a series
- 3 of numbered rows. Each one of those rows is trip; is that
- 4 correct?
- 5 A Yes.
- 6 Q And so, what you would have is the start -- the Time Start
- 7 would be the pick-up time?
- 8 A The --
- 9 Q Is that when they pick up the customer?
- 10 A The first one is the first trip that they pick up.
- 11 Q Okay. So, if we are looking at Number 1, you have got a
- 12 column for the number of passengers; that is the number of
- 13 people that the driver is picking up.
- 14 A Correct.
- 15 Q And then the Time Start, is that the time they picked up
- 16 the customers?
- 17 A Correct.
- 18 Q And then the F -- I believe that should be "From?" Is
- 19 that where they are picking up the customers?
- 20 A That is correct.
- 21 O And a lot of these have a text description, but some of
- 22 the drivers will also use numbers in there, won't they?
- 23 A Sometimes, yes.
- 24 Q And those numbers stand for certain locations such as, I
- 25 believe 16 is the airport?

- 1 A Correct.
- 2 Q And then the destination, the same thing, you could have
- 3 text or numbers describing where they would drop off the
- 4 customers?
- 5 A Yes.
- 6 Q And then the total fare?
- 7 A That is correct.
- 8 Q And that is for the individual trip?
- 9 A Yes.
- 10 Q And then over on the right-hand column, there is other
- 11 information as far as -- it further breaks down the information
- 12 as far as the gross book which is the total number of fares for
- 13 that day, or for that shift; is that correct?
- 14 A That is correct.
- 15 Q Okay. And then there is also a mandatory one-hour lunch
- 16 break.
- 17 A That is correct.
- 18 Q Is that on every trip sheet?
- 19 A Yes.
- 20 Q Now, if the TA inspects a driver's trip sheet and finds
- 21 something that is wrong, it is the driver that is ticketed,
- 22 isn't it?
- 23 A It depends.
- 24 Q What does it depend on?
- 25 A Well, whatever he writes on the trip sheet, it is the

- 1 driver. Whatever the driver writes in here, but if this trip
- 2 sheet doesn't have the clock-in in the beginning, like we clock
- 3 this trip sheet -- the supervisor clock the trip sheets for the
- 4 drivers when they -- when they go out.
- 5 Q Okay, so what happens if they find a trip sheet that
- 6 doesn't have a clock?
- 7 A It has never happened, but they could make us responsible
- 8 for that.
- 9 Q So, it has never happened in your experience; is that
- 10 right?
- 11 A It hasn't.
- 12 Q So, based on a trip sheet problem, is it your experience
- 13 that it has only been the driver that has been ticketed?
- 14 A Yes.
- 15 Q And you are not aware of any time that Nellis has been
- 16 ticketed, right?
- 17 A No.
- 18 Q And I'm sorry, for a driver's trip sheet?
- 19 A Right.
- 20 Q And do you issue discipline on these trip sheets, or based
- 21 on these trip sheets?
- 22 A Yes.
- 23 Q And do you have an estimate of how many disciplines you
- 24 might issue in a month based on trip sheets?
- 25 A I -- I can't even take a guess, a wild guess; forty,

- 1 thirty, twenty? It depends on the month.
- 2 Q So it depends on the month, but it is --
- 3 A Well, it depends on the -- if it is busy, if it is a busy
- 4 month, it might not be the same as the slow months, so I don't
- 5 want to speculate, so I couldn't give you a real number.
- 6 Q Is it fair to say that you are very familiar with trip
- 7 sheets?
- 8 A Yes.
- 9 Q And is every single trip sheet reviewed every single day?
- 10 A Yes.
- 11 Q And who does that?
- 12 A The person who enters the trip sheets into our system.
- 13 Q Do you know what they look for?
- 14 A Readings.
- 15 Q What do you mean by readings?
- 16 A On your -- under -- for -- right underneath their name,
- 17 there is odometer, total miles, paid miles, trips, total money,
- 18 airport fee --
- 19 Q So you are talking about --
- 20 A Those are readings, yes.
- 21 O And what else?
- 22 A Then they go to the right-hand side for the book, gross
- 23 book, airport fees.
- 24 Q Now, with these, they are making sure that everything
- 25 matches with what you have said is in the readings?

- 1 A Correct.
- 2 Q What else do they check?
- 3 A They check on the mandatory one-hour lunch.
- 4 Q Okay.
- 5 A And they also check on the clocking.
- 6 Q Is there anything else they check for?
- 7 A They check also for the medallion number and the signature
- 8 of the driver.
- 9 Q About how many of these trip sheets are turned in each
- 10 day?
- 11 A Over -- if you count both, all of the shifts, I am just
- 12 going to take a wild guess, but over 200.
- 13 Q So in addition to all of the things you have said they
- 14 have already checked, they don't check every single line for --
- 15 every single row on the trip sheets for the trips, do they?
- 16 A Not necessarily, no.
- 17 Q So would it be fair to say if there is something obvious
- 18 like one area that is completely blank, they would catch that?
- 19 A Correct.
- 20 Q But they wouldn't take this and go an analyze every single
- 21 trip, would they?
- 22 A Well, yes. Where it says "[indiscernible]-meter" it is a
- 23 deduction, so they will check that particular trip. Where it
- 24 says "Run Out," which means that people get in the cab and they
- 25 don't pay, they have to write the "Run Out," and give out a

- 1 trip number. And also, "Meter Jumps," when the driver engaged
- 2 the meter by mistake. That also has to be listed here on this
- 3 report.
- 4 Q So -- and on this trip sheet, there is a zero for each one
- 5 of these.
- 6 A That is correct.
- 7 Q So there wouldn't be a need to check the --
- 8 A That is correct.
- 9 Q And so other down -- if there is nothing in there -- so if
- 10 there is something in there, that is something they need to go
- 11 check an individual?
- 12 A Yes.
- 13 Q Okay. So then they don't -- so there is also -- during a
- 14 driver shift, there is also a GPS log that is created; is that
- 15 right?
- 16 A Yes.
- 17 Q And although I am going to be asking questions about the
- 18 GPS log later, they don't check each one of these trips against
- 19 the GPS log unless there is something like that to flag their
- 20 attention to; is that right?
- 21 A If there is a reason, yes.
- 22 Q Okay, but generally, that is not the case, unless there is
- 23 something like this where you have got something that is like a
- 24 trip?
- 25 A Well, it could be that the girls might see a huge trip,

- 1 and not a lot of trips. That would also flag them to ask for a
- 2 GPS, so there is a lot of other stuff, and not what you just
- 3 described just now. It is also the amount of trips that the
- 4 drivers write in this trip sheet, that might flag for the girls
- 5 to ask for the GPS. If the average trips were 34 and somebody
- 6 is coming in with four trips, they are going to ask for the
- 7 GPS.
- 8 Q So if the trips are out of whack with the average, that is
- 9 also a flag?
- 10 A Yes.
- 11 Q Okay. Now, with the -- you said over 200 of these sheets,
- 12 unless they see something like that, they won't be checking
- 13 every individual item of every --
- 14 A Not necessarily, no.
- 15 Q Okay. Now, is there any posting for the drivers to see
- 16 what had been wrong on the trip sheets the day before?
- 17 A Can you repeat that again?
- 18 O You don't post a list for all of the drivers to see of all
- 19 of the problems that you had seen on the trip sheets for the
- 20 day before, do you?
- 21 A No, they get -- if they get something wrong on the trip
- 22 sheet, they get a copy of the trip sheet.
- 23 Q So they get it as an individual for what they did?
- 24 A Right.
- 25 Q All right, but you don't post anything for all of the

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- 1 drivers that says, like, Abiy Amede, he had this wrong with his
- 2 trip sheet?
- 3 A No. No, we don't.
- 4 MR. SMITH: And, Your Honor, I would like to offer General
- 5 Counsel's Exhibit No. 5.
- 6 MR. WINKLER: No objection, Your Honor.
- 7 JUDGE POLLACK: General Counsel's Exhibit No. 5 is
- 8 received.
- 9 (General Counsel's Exhibit No. 5, received into evidence.)
- 10 MR. SMITH: Thank you, Your Honor.
- 11 Q BY MR. SMITH: Now, I have got a couple questions about
- 12 falsifying trip sheets.
- 13 Falsifying trip sheets is giving false information on the
- 14 trip sheet; is that right?
- 15 A That's correct.
- 16 Q And falsifying trip sheets is a TA violation?
- 17 A It is an NAC and NRS violation.
- 18 Q NAC and NRS, and that is what is enforced by the TA?
- 19 A That is correct.
- 20 Q Okay, so does falsifying trip sheets, in Nellis' view,
- 21 what falsifying trips sheets as, does that include both lying
- 22 to the TA -- either lying to the TA or lying to the Company?
- 23 A You could say so, yes.
- 24 Q And does it include lying about pick-up times?
- 25 A Correct.

- 1 Q Does it include lying about breaks?
- 2 A I don't understand what you mean.
- 3 Q Well, if their trip sheet shows that they were on break
- 4 and they are picking up rides during that time, is that
- 5 falsifying a trip sheet?
- 6 A Yes.
- 7 Q Now, drivers are given this trip sheet at the start of
- 8 their shift; is that right?
- 9 A That is correct.
- 10 Q And I believe you already said that is when the
- 11 supervisors will stamp in the clock-in time?
- 12 A That is correct.
- 13 Q And what are the start times for your shifts at Nellis?
- 14 A We got -- I am going to start with day shift, which is a
- 15 start of 3:00 a.m. in the morning to 3:00 p.m. in the
- 16 afternoon. Then we got 12:00 noon to 12:00 midnight. Then we
- 17 got 2:00 p.m. to 2:00 a.m., Thursday, Friday, Saturday and
- 18 Sunday, that goes around the clock. Then we have the geo-
- 19 restricted which is the same as the regular, that starts from
- 20 3:00 to 3:00 around the clock.
- 21 Q And is that all of the shifts that Nellis operates?
- 22 A Plus the three -- the three medallions we have in the
- 23 south, which we only operate one trip -- one shift, which is we
- 24 have two people doing 6:00 a.m. to 6:00 p.m. and one is doing a
- 25 -- right now that is changed. It is 11:00 a.m. to 11:00 p.m.

- 1 Q So when you said medallions on the south, is that the
- 2 geographically-restricted medallions?
- 3 A That is considered geo-restricted, yes.
- 4 Q So they operate -- when you say the "south," is that more
- 5 like the Henderson area?
- 6 A Correct. South of Sunset.
- 7 Q So it doesn't include the Strip?
- 8 A No.
- 9 Q And are they prohibited from picking up on the Strip?
- 10 A That is correct.
- 11 Q But they can drop off on the Strip?
- 12 A They can.
- 13 Q And when I say "the Strip," that is what is commonly
- 14 called Las Vegas Boulevard; is that right?
- 15 A Well, that is Las Vegas Boulevard, Downtown. They are
- 16 also forbidden from picking up Downtown.
- 17 Q Okay, and is Downtown more in the northern part of Las
- 18 Vegas --
- 19 A Yes.
- 20 Q -- down there by like Fremont Street?
- 21 A Fremont.
- 22 Q Now, certain drivers have an "A" shift that they work; is
- 23 that right? And maybe I will start with, drivers have to earn
- 24 a shift, don't they?
- 25 A Yes.

- 1 Q And once they have earned a shift, they generally have a
- 2 cab that is assigned to them; is that right?
- 3 A Yes.
- 4 Q And they drive that cab each day?
- 5 A Not necessarily.
- 6 Q Is -- generally, do they drive each cab each day, or that
- 7 same cab each day?
- 8 A Some of them do and some of them don't. It all depends on
- 9 the availability that I have to use that car for the days that
- 10 they have a shift. Sometimes a driver might drive two
- 11 different cars. Sometimes a driver might drive three different
- 12 cars. Sometimes a driver might drive one car.
- 13 Q Okay. So when you say "sometimes," do you know about the
- 14 percentage of the drivers that have a regularly assigned cab?
- 15 A I -- well, they all have -- they all have assigned cars.
- 16 It is just -- it is not the same car. Everybody that has a
- 17 shift for Nellis Cab has an assigned cab, but it is not
- 18 necessarily the same cab.
- 19 Q Okay. And then they would drive that cab generally each
- 20 day with the same medallion on it?
- 21 A No. That would be -- that would be the same medallion
- 22 because you asked me earlier, sometimes we take the medallions
- 23 and we switch them.
- 24 Q Yeah.
- 25 A If there is a service in that particular car that is being

- 1 held, if there is something that we need to do to the cab or a
- 2 quality inspection from the TA has to be held at that
- 3 particular time, that driver will drive a different car, a
- 4 different cab.
- 5 Q So unless one of those situations are going on, they
- 6 generally would drive the same cab with the same medallion; is
- 7 that right?
- 8 A Not the same medallion -- it could be the same medallion,
- 9 it could be a different car, or it could be a different
- 10 medallion.
- 11 Q Okay. And does Nellis use extra board drivers?
- 12 A Yes.
- 13 Q Okay. And how do they get their work? How do extra board
- 14 drivers get a cab?
- 15 A Oh, we usually schedule the drivers to give them five
- 16 days' work when they don't have a shift, what we call extra
- 17 board drivers, and they are supposed to show up every day, and
- 18 within 35 minutes of showing up, they will know if they are
- 19 working or not, or when it is -- when we can do it, we let them
- 20 know in advance that they will be off the next two days, until
- 21 they earn their shift.
- 22 O So if they don't get this assignment within the first 35
- 23 minutes, then do they leave?
- 24 A Yeah, they go home.
- 25 Q So once the shift goes out, say like the -- I believe you

- 1 said there is a shift that starts at 3:00 p.m., all of the cabs
- 2 are assigned. If there are any extra board drivers, they get
- 3 whatever is assigned, but then once the cabs go out, there is
- 4 nobody left; is that right? No cab drivers left?
- 5 A No, if we fill the shift, everybody is out.
- 6 Q And when you say everybody is out, they are no longer
- 7 staying at Nellis; is that right?
- 8 A I don't understand the question.
- 9 Q So the cab drivers that have cabs, they go out and they
- 10 start earning fares?
- 11 A Right.
- 12 Q The ones that don't have cabs, they -- they don't stick
- 13 around at Nellis, do they?
- 14 A For 30 minutes.
- 15 O For 30 or 35 minutes --
- 16 A Yes, 30 or 35 minutes.
- 17 Q So if -- and then if they don't get a cab, then they
- 18 leave?
- 19 A They go home, yes.
- 20 Q I know you said earlier, we were talking about the break,
- 21 Nellis actually requires the break, doesn't it?
- 22 A We tell our drivers to take a one-hour lunch break, yes.
- 23 Q And they are actually required by the Employee Handbook,
- 24 aren't they?
- 25 A That's correct.

- 1 Q And I believe that is on Page 3 of General Counsel's
- 2 Exhibit No. 2?
- 3 MR. WINKLER: No, 47, isn't it?
- 4 MR. SMITH: I'm sorry.
- 5 [Long pause]
- 6 Q BY MR. SMITH: Well, it is -- maybe I will come back to
- 7 that because --
- 8 MR. WINKLER: Page 42. No, my mistake.
- 9 MR. SMITH: I'm sorry. If I could have a moment off the
- 10 record, Your Honor?
- 11 JUDGE POLLACK: Off the record.
- 12 [Off the record]
- 13 JUDGE POLLACK: Back on the record.
- 14 Q BY MR. SMITH: Just so, for the record, that is the policy
- 15 that is reflected on Page 483; is that right?
- 16 A Yes.
- 17 Q Okay. And failure to take this mandatory lunch break also
- 18 results in a warning, doesn't it?
- 19 A That's correct.
- 20 Q Okay. Now, the GPS logs, and we are going to set this
- 21 aside for the moment, the GPS logs show where the cab is by GPS
- 22 coordinates; is that right?
- 23 A Yeah, the GPS pings every five minutes for the coordinates
- 24 of where the cab is.
- MR. SMITH: I am going to hand out what has been

- 1 identified as General Counsel's Exhibit No. 7.
- 2 (General Counsel's Exhibit No. 7, marked for identification.)
- 3 Q BY MR. SMITH: Now, is this representative of part of a
- 4 shift's GPS log?
- 5 A Part of a shift, yes.
- 6 Q Okay. And then on the -- just so we know what we are
- 7 looking at, up at the top you have got the cab number where it
- 8 says 754?
- 9 A Yes.
- 10 Q And that is the number that is assigned to the individual
- 11 cab; is that right?
- 12 A That's correct.
- 13 Q And that is independent of the medallion number; is that
- 14 right?
- 15 A That's correct.
- 16 Q And then we have got the GPS time and I believe this -- is
- 17 this where it shows the time increments that you were talking
- 18 about, where it takes a snapshot of where the car is located
- 19 at?
- 20 A Yeah, this every five minutes ping?
- 21 Q I'm sorry, your word, ping.
- 22 And then you have got an address which is where the cab is
- 23 roughly at?
- 24 A That's correct.
- 25 Q And then you have got GPS LA; is that latitude?

- 1 A Latitude, yes.
- 2 Q And then GPS LO; is that longitude?
- 3 A Longitude.
- 4 Q And then you have got the speed of the cab?
- 5 A That's correct.
- 6 Q And then you have Status. I see "HE" and "VE."
- 7 A That is the status of the meter.
- 8 Q And what is HE?
- 9 A Hire.
- 10 Q What does that mean?
- 11 A That the meter is engaged.
- 12 Q So that they have got -- the driver has a ride at that
- 13 point?
- 14 A Correct.
- 15 Q And then, "VE?
- 16 A Vacant.
- 17 Q So the GPS is a device that is actually in the cab itself;
- 18 is that right?
- 19 A Yes.
- 20 Q And it stores this information in that device in the cab;
- 21 is that right?
- 22 A I don't know the technical part of it. I -- where the
- 23 storage is. I don't know.
- 24 Q Do you know that when it gets -- when the cab driver gets
- 25 back to the yard, is there a download that is done from the cab

- 1 to Nellis?
- 2 A No, not a download. It is actually a software in the
- 3 computer.
- 4 Q Do they have to go out to each individual cab to get the
- 5 information?
- 6 A No.
- 7 O Is it transmitted wireless?
- 8 A Yes.
- 9 MR. SMITH: I would like to offer General Counsel's
- 10 Exhibit No. 7, please.
- 11 MR. WINKLER: No objection.
- 12 JUDGE POLLACK: Thank you. General Counsel's Exhibit No.
- 13 7 is received.
- 14 (General Counsel's Exhibit No. 7, received into evidence.)
- 15 Q BY MR. SMITH: The GPS logs, they are not required by the
- 16 NAS -- NRS or NAC, are they?
- 17 A Not to my recollection, no.
- 18 Q So Nellis does this by choice in their operation; is that
- 19 right?
- 20 A The whole -- almost the whole industry uses it.
- 21 Q Now, like the trip sheets, these aren't reviewed for every
- 22 single driver every single day, are they?
- 23 A Reviewed in which way?
- 24 Q Do you pull every single driver's GPS logs every single
- 25 day to review them?

- 1 A No.
- 2 Q But you do pull GPS logs after low productivity, don't
- 3 you?
- 4 A That is one of the occasions. I pull them up for other
- 5 reasons, too.
- 6 O Well --
- 7 A We discussed them before.
- 8 Q Okay. So only those, and that is when we were discussing
- 9 the trip sheets?
- 10 A Yes.
- 11 Q That is the only times -- the only occasions when you
- 12 would pull the GPS logs?
- 13 A Yes.
- 14 Q And the GPS, that is tied into the meter for the ride,
- 15 isn't it?
- 16 A The GPS is tied up into the meter and also to the credit
- 17 card machine that we have in every cab.
- 18 Q Do you know why that is?
- 19 A Because now taxicabs in Vegas, they -- you can pay with a
- 20 credit card.
- 21 Q But why would the GPS be -- do you know why that is tied
- 22 in?
- 23 A That is not our equipment. That is another company.
- 24 Q Okay.
- 25 A I have no idea why.

- 1 Q Okay. I am going to ask you a few questions then moving
- 2 on to fee -- how are the fares split? You have got the -- I'm
- 3 sorry, the gross fares that are on the trip sheet. How are
- 4 those fares split so that the driver gets paid?
- 5 A Well, actually, every company has their own formula. I
- 6 don't even know the formula in my company because the owner is
- 7 the only one who knows that. All I can tell you is that at
- 8 Nellis Cab, it goes from 37 percent to 42 percent, the split.
- 9 Q And what do you mean by 37 to 42? What is the 37?
- 10 A Off the -- off the book.
- 11 Q And the trip sheet is General Counsel's Exhibit No. 5.
- 12 A So just to clarify, off gross book; 37 to 42 percent of
- 13 the gross book, that is in the trip sheet.
- 14 Q Now --
- 15 JUDGE POLLACK: Goes to the driver or --
- 16 THE WITNESS: Yes, 37 to 42 percent to the driver.
- 17 JUDGE POLLACK: Okay. Does the amount include tips or --
- 18 THE WITNESS: They do declare tips. They have a -- an
- 19 agreement, every driver, with the IRS, which is 23 percent.
- 20 That is part of the formula.
- 21 JUDGE POLLACK: Okay, but on the trip sheet where it says
- 22 "Total Fare," that does not include tips?
- 23 THE WITNESS: No. That is the total fare. Out of the
- 24 total fare, the IRS charges the drivers.
- JUDGE POLLACK: Okay, thank you.

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- 1 Q BY MR. SMITH: And the Employee Handbook also has an area
- 2 that addresses the fee split. Maybe that would -- is that
- 3 right?
- 4 A I am pretty sure it does, yes. I haven't --
- 5 Q If I could get you to reference General Counsel's Exhibit
- 6 No. 2, the Employee Handbook on Page 2.
- 7 A Page 2?
- 8 Q Yes, sir.
- 9 A Right.
- 10 Q So is that what I am looking at where the -- the
- 11 commission is -- it describes Net Book as being gross book less
- 12 all fuel usage less all trip adjustments?
- 13 A No, this explains -- this explains something different.
- 14 This is net book.
- 15 Q Okay, and what is that?
- 16 A Okay, net book is after -- is what we call here gross
- 17 book, after all of the deductions, it says Total Turn In, that
- 18 could be -- that should be Net Book, because you have to
- 19 consider all of the deductions before -- the driver has to do
- 20 before he turns in his money.
- 21 O So when we are talking about all of the deductions, is
- 22 that any of the things that are listed on the trip sheet or --
- 23 A That is what the driver does, yes. Those are the drivers
- 24 -- it is done by the drivers.
- 25 Q And then from that, you have got the -- you would take out

- 1 the fuel usage, or is that one of the deductions?
- 2 A Well, those -- all of those -- now you are asking me about
- 3 a different thing. You are asking me about a formula.
- 4 After all of those deductions are done by the driver, then
- 5 it is a formula that determines around 37 percent that they get
- 6 to 42 percent. What all of the other deductions were, they
- 7 don't pay for fuel at Nellis Cab. They do pay for trips; I
- 8 don't know how much they pay for trips. Every company has
- 9 their own formula.
- 10 Q You said they don't pay for fuel. So the drivers don't
- 11 pay for fuel use?
- 12 A No, they don't. Not at my company.
- 13 Q Now, is there some place in the handbook which tells the
- 14 drivers that they get --
- 15 A No, but it is right in front of your eyes here.
- 16 Q Okay, and please explain that to me.
- 17 A When the driver is deducting \$47.65, it is a deduction.
- 18 He might pay for the gas when he goes to the gas station, out
- 19 of Nellis money. The driver comes in with zero money in his
- 20 pocket. Drives and books \$300.00, plus all of the other tips
- 21 that are not declared by the drivers besides the 23 percent.
- 22 Out of that money, he goes and puts \$47.65, which is company
- 23 money. When he gets to the yard, he deduct \$47.65 that you see
- 24 on the trip sheet.
- 25 Q Okay.

- 1 A So Nellis drivers don't pay for gas.
- 2 Q So, when the drivers get paid, they don't have a breakdown
- 3 that explains -- when they get their pay stubs, they don't have
- 4 anything that shows --
- 5 A The formula?
- 6 Q -- the formula.
- 7 A No. No, none of the companies do. It is not required by
- 8 law.
- 9 MR. SMITH: I want to hand out what is identified as
- 10 General Counsel's Exhibit No. 8, (a) and (b).
- 11 (General Counsel's Exhibit No. 8(a) and 8(b), marked for
- 12 identification.)
- 13 Q BY MR. SMITH: So this is representative of a pay stub,
- 14 isn't it?
- 15 A A paystub.
- 16 Q So there is nothing that breaks down -- is this
- 17 representative of what you said that doesn't breakdown what you
- 18 said is how they get paid?
- 19 A You mean the formula?
- 20 Q Yes.
- 21 A Well, it is not here, no.
- 22 Q Okay.
- MR. SMITH: Your Honor, I would like to offer General
- 24 Counsel's Exhibit No. 8(a) and (b).
- 25 MR. WINKLER: No objection.

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- JUDGE POLLACK: General Counsel's Exhibit No. 8(a) and (b)
- 2 are received.
- 3 (General Counsel's Exhibit No. 8(a) and (b), received into
- 4 evidence.)
- 5 MR. SMITH: Thank you, Your Honor.
- 6 Q BY MR. SMITH: Now this mentions on General Counsel's
- 7 Exhibit No. -- Page 2 -- General Counsel's Exhibit No. 2, Page
- 8 2, the "Less all trip adjustments."
- 9 A Say that again?
- 10 Q When I am looking at the formula with the net book, his
- 11 gross book less all fuel usage less all trip adjustments --
- 12 A I don't see that. Where are we looking at?
- 13 Oh, the book.
- 14 Q Yes, the Employee Handbook.
- 15 A Okay, go ahead.
- 16 Q It says, "Less all trip adjustments."
- 17 A Yes, that is deducted, yes.
- 18 Q Okay. So what is the "all trip adjustments?"
- 19 A It is what the Company charge for trips to the driver,
- 20 which all of the companies do, per trip.
- 21 O And how much is that?
- 22 A I have no idea.
- 23 Q Is it for every single trip?
- 24 A Yes.
- 25 Q And are there variations in what is charged per trip?

- 1 A I have no idea.
- 2 Q Well, do you know if it -- does it change if you are
- 3 picking up at the airport?
- 4 A No, the trip charge -- I know it is one for every trip no
- 5 matter where you pick up, a trip charge. Picking up at the
- 6 airport, there is another charge that has nothing to do with
- 7 the trip. It has to do with the airport fee.
- 8 Q And what do you mean by that? How does that --
- 9 A The airport charges all of the companies. Actually, the
- 10 passenger pays for that. Every time you pick up at the
- 11 airport, every cab has a transponder, and every time you go in
- 12 to pick up, you get a bill every month and we have to pay the
- 13 airport for all of the fares that we picked up at the airport.
- 14 Q So that payment is made to the airport?
- 15 A To the airport.
- 16 [Long pause]
- 17 Q Now, Nellis can change -- we are talking about the
- 18 formula; Nellis can change this formula at any time; is that
- 19 right?
- 20 A According to -- yes.
- 21 O Okay. I am going to ask you some guestions about
- 22 productivity. Productivity is also called "book;" is that
- 23 right?
- 24 A Yes.
- 25 Q And drivers are measured on their productivity every day;

- 1 is that right?
- 2 A That is correct.
- 3 Q And is it that they -- is their -- their productivity is
- 4 measured against the drivers on their same shift?
- 5 A That is correct.
- 6 MR. SMITH: I am going to hand out what has been marked as
- 7 General Counsel's Exhibit No. 10.
- 8 (General Counsel's Exhibit No. 10(a) through 10(g), marked for
- 9 identification.)
- 10 Q BY MR. SMITH: Now, General Counsel's Exhibit No. 10, are
- 11 you familiar with this type of document?
- 12 A Yes.
- 13 Q Is this a productivity report for a day?
- 14 A That is correct.
- 15 Q Now, looking at this document so we know what we are
- 16 looking at, you have got on 10(a), there is a -- it says "Day,"
- 17 so does that mean day shift?
- 18 A Day shift.
- 19 Q And then there is a series of numbers, 1, going down to
- 20 88.
- 21 A That is correct.
- 22 Q Is that the ranking of the drivers for productivity on
- 23 that shift?
- 24 A Yes.
- 25 Q And that is only for that day, right?

- 1 A For that day.
- 2 Q And then the names, that is the names of the drivers?
- 3 A Yes.
- 4 Q And then cab numbers?
- 5 A Yes.
- 6 Q There is a column that says "No Trip." Is that --
- 7 A The number of trips.
- 8 Q Okay, and total miles. Is that total miles driven or
- 9 total miles paid?
- 10 A Total miles driven.
- 11 Q And then the column next to it is the number of miles
- 12 where they were actually collecting a fare?
- 13 A Paid, right.
- 14 Q And then "PM Percent." What -- what is that?
- 15 A Okay, that is the percentage of paid miles.
- 16 In our industry, the only way to make it profitable, we
- 17 ask -- we look for more than fifty percent pay miles, meaning
- 18 we can't have a cab out there driving without their meter
- 19 engaged for a hundred miles and nothing paid. So we also check
- 20 on the percentage of paid miles that that particular driver did
- 21 that day.
- 22 Q Now, does the percentage of paid miles, does that come
- 23 into discipline, at all?
- 24 A That is -- it could be.
- 25 Q All right, and then "Gross Book," is that -- should that

- 1 be the same as what is on the trip sheet for that driver for
- 2 that shift?
- 3 A That -- the "Gross Book" is what the trip sheets call
- 4 Total Money.
- 5 Q I'm sorry -- oh, so that is the column at the top of -- if
- 6 we are looking at the trip sheet, General Counsel's Exhibit No.
- 7 5?
- 8 A Yes, right.
- 9 Q Okay. So, there is an average for the fares for day shift
- 10 that would be generated, right?
- 11 A Right. When you compare all of the drivers and divide it
- 12 for the amount of money that was collected, it gives you an
- 13 average.
- 14 Q And is that shown on Page --
- 15 A On the bottom -- if you go to Page 2 of the Rank Report,
- 16 just below 88, which is the last driver, then you go "Adjusted
- 17 Shift Average," the average for day shift, where it says "Gross
- 18 Book," go down that line, that will be the average for that day
- 19 for the day shift, which is \$311.36.
- 20 Q Now, there is a number over there to the right of that,
- 21 where it says "-80.08."
- 22 A Those are the drivers who are minus on the average. Where
- 23 it says "shift," that tells you that all of the cars were away
- 24 -- they were away from \$311.36, the amount of money.
- 25 Q Okay, so I guess I am not sure -- the 80.08, is that a

- 1 dollar amount or is that the number of drivers or --
- 2 A Where do you see the --
- 3 Q When you were looking at the -- the Adjusted Shift
- 4 Average, when you --
- 5 A No, that is something -- that has nothing to do with
- 6 individual drivers. The "minus-80" is something that is for
- 7 all shifts, for all of the shifts that we have. It is
- 8 something that -- it has nothing to do with the drivers.
- 9 Q Okay. So, when we are looking at this -- at this
- 10 productivity for this shift, how would we know who would gets
- 11 -- who would get a "low book" warning?
- 12 A In this particular one -- two people.
- 13 Q And how can I -- in looking at this list, how would I be
- 14 able to tell that?
- 15 A The -- when you look at No. 86, right below him is 87,
- 16 Joshua Strohm. He is below the average \$124.00.
- 17 Q Okay.
- 18 A He will not get a written warning, because if you look
- 19 right next to his name, it mean that he broke down. He had two
- 20 cabs. And right next to that, it says, "Yes." Yes means he is
- 21 off average. We don't discipline this driver because he broke
- 22 down; he lost a lot of time.
- 23 Q So, is that -- where can I tell it is off average. Is
- 24 that where it says "Yes?"
- 25 A Yes.

- 1 O And that column for that is short.
- 2 A Right.
- 3 Q So that short means that they were below average?
- 4 A Well, yes.
- 5 Q Okay, and I am a little confused and maybe you can help me
- 6 out with this, so like if we look at No. 9 on the first page
- 7 which is Bascos, it says "Yes," for him, but doesn't he have
- 8 good book for that day?
- 9 A That is correct, but what we do, is we put everybody off
- 10 average when they are not out there working. This guy probably
- 11 came in, left early, went home early sick, and we put him off
- 12 average, because he wasn't competing with the other guys out
- 13 there.
- 14 Q Okay.
- 15 A Even though he was up or whether he was low, he is not
- 16 going to get reprimanded anyway.
- 17 Q So short doesn't mean like short in dropping their book?
- 18 A No, no, no, no, no.
- 19 Q Okay, so again going back to the original question, was
- 20 how could I tell who gets low book for the day?
- 21 A Oh, anybody who was "minus-80."
- 22 O So, on this, on 10(a) and (b), is there something that
- 23 shows you --
- 24 A Yeah, there -- what I show you before where it says
- 25 Variances in Shift, just go down the line on Shift, and you

- 1 will see Bryan Forbach, No. 86, he was minus \$113.00. And
- 2 there is no "yes" next to his, his name, he will get
- 3 disciplined. The next one up is Digafie Abinet. He was minus
- 4 \$99.00. He will get disciplined or a written warning, but the
- 5 above guy, Marcia -- Garza-Martinez, he was minus \$89.00 but it
- 6 is "yes," so he won't get a written warning.
- 7 Q Okay, so looking at this list, you look at the shift
- 8 variance, and if it is minus 80 or worse --
- 9 A Right.
- 10 Q -- and there is not one of the yeses, it doesn't say
- 11 "yes," then they would get --
- 12 A That is correct.
- 13 Q Now, looking at 10(s), the second individual, the number 2
- 14 individual, a person named Mark Setser.
- 15 A Yes.
- 16 Q Now, he is the second highest booker of 88 drivers; is
- 17 that right?
- 18 A That's correct.
- 19 Q But for his number of trips, he only has fourteen.
- 20 A That's correct.
- 21 Q And I believe on the average, which is shown on (b), the
- 22 average number of trips were 21.
- 23 A Correct, 21.
- 24 Q So does he get flagged for review because he had such a
- 25 good book with so few trips?

- 1 A Not necessarily. When the girls see this, he could have
- 2 had a -- anybody you see somebody with low -- low numbers of
- 3 trips and high money, it is usually a good trip, and the girls
- 4 check on that. This guy probably went to [indiscernible],
- 5 round-trip.
- 6 Q But there is no way to know -- to check, unless you
- 7 actually do check.
- 8 A Yeah, the girls look, because like I told you before, when
- 9 you asked me if they look at this -- when they see somebody
- 10 with fourteen trips and it is 22, they kind of look on the
- 11 entry and they can see that it is a good trip. It could have
- 12 been a charter, Hoover Dam, whatever.
- 13 Q Now, is there some way that Setser could cheat to get high
- 14 numbers like that?
- 15 A Cheat in a way of having a good ride? I guess he would
- 16 have to pay for it.
- 17 Q What do you mean that he would have to pay for it.
- 18 A Well, you have to engage the meter.
- 19 Q Okay, but is there a way for him to cheat the customer and
- 20 get high book?
- 21 A I don't understand the question. Cheat the customer in
- 22 which way?
- 23 Q Well, let me ask you this: What is long-hauling?
- 24 A Okay, I knew you were -- let me tell you right now, there
- 25 is a way that he can do it, I don't know. There is a way that

- 1 I can prove it, I don't know.
- 2 This trip sheet cannot tell me that. We been through this
- 3 a thousand times with other agencies, and I can't tell and I
- 4 cannot assume that he is cheating the customer, because there
- 5 is no way for me to prove it.
- 6 Q And this -- I mean, and this wouldn't show whether or not
- 7 he was long-hauling; is that right?
- 8 A He could have multiple trips, I mean, multiple stops in
- 9 one trip. Somebody get off at the airport, went to get a -- I
- 10 mean, it is going to show a ride from the airport for \$80.00.
- 11 He could do like one driver did, went to see his aunt in
- 12 Henderson, went and came back, went to the liquor store, stop
- 13 at the Las Vegas Wedding Chapel, got a marriage certificate,
- 14 and went home to the Mirage, and that was it. The driver
- 15 writes "Airport to Mirage, \$80.00 ride." So there is no way to
- 16 prove it.
- 17 Q Okay, well, let's go ahead -- we will cover long-hauling
- 18 in a little bit more detail now. I was going to cover it
- 19 later, but long-hauling means taking a customer on a longer
- 20 route than what they have agreed to, which results in a higher
- 21 fare; is that right?
- 22 A That is correct.
- 23 Q And that is long-hauling is prohibited by the NAC and the
- 24 NRS.
- 25 A That is correct.

- 1 Q And the fare for long-hauling would boost the driver's
- 2 productivity.
- 3 A That is correct.
- 4 Q And the only way that a consequence is triggered is if the
- 5 customer complains; is that right?
- 6 A That is correct.
- 7 Q So, if the driver -- if the customer doesn't complain,
- 8 then Nellis and the driver would each keep their portions of
- 9 the fee.
- 10 A That is correct.
- 11 Q So, both make out when a driver long-hauls and is not
- 12 caught.
- 13 A I don't know.
- 14 Q Well, I mean, if you both keep your portion of the fee --
- 15 A I don't know if he long-hauls. I can't say "yes," because
- 16 I don't know if he long-hauled.
- 17 Q Right, but when they do, you know, assuming that they do,
- 18 then --
- 19 A Well, I don't want to assume. I just want to clarify your
- 20 question because you just asked me the question and I want to
- 21 tell you again, you are telling me that when a driver long-
- 22 hauled, we both keep a portion of that passenger's money. I
- 23 told you before, if they complain, we discipline -- we give
- 24 disciplinary action to the driver. That is the only time I
- 25 know it is long-haul.

- 1 Any other time, you can say whatever you want to say, but
- 2 I am not going to agree with you.
- 3 Q So -- but any other time, unless there is a customer
- 4 complaint, the fee is split the same way it normally would be.
- 5 A Oh, yes.
- 6 Q So you said when a customer complained, I know you said
- 7 that the driver is disciplined, but how -- when a customer
- 8 complains, what happens?
- 9 A Right now, the Taxicab Authority has an excellent program
- 10 going on, where every customer can complain to the Taxicab
- 11 Authority directly. The Taxicab Authority e-mails us. We take
- 12 the driver, we investigate if it is true. If it is true that
- 13 he long-hauled the people, we give him two chances.
- 14 The first one, if they have to refund the money to the
- 15 passenger, and they get a written warning. The second time,
- 16 they just let go.
- 17 Q So you said, if he has to refund the money, so is it the
- 18 driver refunding the money?
- 19 A The money is refunded by the driver.
- 20 O So, Nellis' portion of the share doesn't get affected
- 21 because the refund comes from the driver?
- 22 A We charge the driver for the difference of the fare. In
- 23 other words, if this person was over-charged, the driver pays
- 24 for the difference. We don't keep anything.
- 25 Q You don't keep the portion of the fare that you would have

- 1 normally taken from that ride?
- 2 A I -- yes, I do.
- 3 Q Okay.
- 4 A So does the driver; he pays for the difference. He over-
- 5 charged the passenger.
- 6 Q So, if it goes more than what his share of the split would
- 7 be, then he refunds the difference over and above what he
- 8 retains?
- 9 A That is correct.
- 10 Q Well, as part of the subpoenaed documents, there were
- 11 notes on terminations and quits. I believe it was from a
- 12 notebook. Do you keep a notebook on terminations and quits?
- 13 A I have a program where I keep hires and terms.
- 14 Q Do you remember any drivers being terminated for long-
- 15 hauling in the past two years?
- 16 A Two, I think, this year. In the two years? No.
- But this year, I think two.
- 18 Q And do you remember the names of the two that were
- 19 terminated this year?
- 20 A I think -- I think one of them -- I am not sure but I
- 21 think one of them was Kelvin Banks or -- I can't remember right
- 22 now.
- 23 [Long pause]
- MR. SMITH: If I can have a moment, Your Honor.
- JUDGE POLLACK: Off the record, please.

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- 1 [Off the record]
- 2 JUDGE POLLACK: Back on the record, please.
- 3 Q BY MR. SMITH: So, when the drivers, they get flagged for
- 4 productivity, that would -- a driver, you would expect him to
- 5 be flagged for productivity if they took too many breaks; isn't
- 6 that right?
- 7 A Not necessarily.
- 8 Q Why not?
- 9 A They could be -- they could be at the airport at the wrong
- 10 time, drinking coffee when no planes are coming. They could be
- 11 downtown when nothing is going on, or they could be taking long
- 12 breaks at home; different reasons.
- 13 Q So, a driver that takes long breaks, they would normally
- 14 show up as a low productivity, wouldn't they?
- 15 A Not necessarily. I have got drivers that after they get a
- 16 good ride, and they might take a longer break but I don't know
- 17 about it. I don't know. It is not just one thing.
- 18 Q But it is not something you would go out specifically
- 19 looking for because the long break would normally be flagged --
- 20 A By the GPS. If somebody -- we went through this. If
- 21 somebody -- you asked me, who is going to get disciplined by a
- 22 low book, I will go and look into it.
- 23 Q Okay, so if they are flagged for a low book, then you pull
- 24 the GPS and you take a closer look?
- 25 A Right.

- 1 Q Okay.
- 2 A That is correct.
- 3 Q Now, other than the February 4th, the drivers there were
- 4 disciplined at least in part for a long break; is that right?
- 5 A Yes.
- 6 Q And there were seventeen drivers that actually --
- 7 A That is what it was, I think.
- 8 Q Okay, and other than February 4th, do you remember when
- 9 was the last time you issued a break -- a discipline for a long
- 10 break?
- 11 A I don't remember. I don't think I ever did.
- 12 [Long pause]
- 13 Q And then, I am going to ask one more question. So this is
- 14 February 4th, and I am looking at General Counsel's Exhibit No.
- 15 10.
- 16 A Okay.
- 17 Q When I am looking at the very last page, and -- I'm sorry,
- 18 not the very last page. The -- as we go through this, like if
- 19 you look at (b), there is Day 2-2.
- 20 A That day -- the -- that is 2:00 a.m. to 2:00 p.m.
- 21 Q 2a to 2p?
- 22 A Right.
- 23 Q And then are they measured the same way, \$80.00 below
- 24 average?
- 25 A Yeah, \$80, \$80.00.

- 1 Q And then days 4:00 to 4:00?
- 2 A Same thing.
- 3 Q Now --
- 4 A Oh, that is geo-restricted; geo.
- 5 Q And that is 4:00 p.m. to 4:00 a.m.?
- 6 A That is -- we call it 4 to 4, but it is actually 3:00 to
- 7 3:00. We just have a staggered shift because of the flow, and
- 8 we have rooms to bring so many cabs at the same time.
- 9 Q And that is 3:00 p.m. to 3:00 a.m.?
- 10 A Yes.
- 11 Q And then there is a section that says "Day-dash-CLMB."
- 12 A That is -- that particular day, we had four extra
- 13 medallions allocated by the Taxicab Authority, and the call
- 14 them convention medallions. Those are temporary medallions for
- 15 a certain amount of days, whatever the convention was going on
- 16 that day. I don't recall.
- 17 Q So if you don't have a convention, you wouldn't even have
- 18 that section on there?
- 19 A No. It was an allocation; I wouldn't have it, no.
- 20 Q And then Night, there is a portion for the nights --
- 21 A That is the night regular 24/7 shift.
- 22 Q And is that the 3:00 p.m. to 3:00 a.m.?
- 23 A Yes, 3:00 p.m. to 3:00 a.m.
- 24 Q And for each one of these shifts, they are calculated the
- 25 same way, as far as they -- they get an average for their shift

- 1 and --
- 2 A That is correct. And they are compared to that, just
- 3 their shift.
- 4 Q So they are not measured against one of the other shifts?
- 5 A No. No, because I just want to answer so you can
- 6 understand so we don't go back to the same thing.
- 7 You can't compare day shift with night shift when you see
- 8 the numbers. Maybe night shift is more productive than day
- 9 shift. You can't compare geo-restricted cabs that are not
- 10 allowed to pick up at the airport, Las Vegas Boulevard or
- 11 downtown, you can't compare that with the guys that are not
- 12 geo-restricted.
- 13 That is why we are as fair as we can be. We compare every
- 14 driver accordingly to their shift that they are working on
- 15 only.
- 16 Q So it is not just based on the working hours because you
- 17 could have things like that, the geographic restrictions that
- 18 keep them --
- 19 A That is correct.
- 20 Q Now, looking at 10(g) at the very end, these are grand
- 21 totals, and the fifth grand total over says \$105,773.48. Is
- 22 that the grand total in fares for that day?
- 23 A That is correct.
- MR. SMITH: Your Honor, I would like to offer General
- 25 Counsel's Exhibit No. 10(a) through 10(g).

- 1 MR. WINKLER: This is for February 4, 2012?
- 2 MR. SMITH: Yes.
- 3 MR. WINKLER: No objection.
- 4 JUDGE POLLACK: Thank you.
- 5 General Counsel's Exhibit No. 10 is received.
- 6 (General Counsel's Exhibit No. 10(a) through 10(g), received
- 7 into evidence.)
- 8 Q BY MR. SMITH: Now, I am going to ask you about this long
- 9 break that the drivers took, and that was on February 4th,
- 10 wasn't it?
- 11 A Uh-huh. Yes, sorry.
- 12 Q And I am going to refer to -- I believe it was 17 I
- 13 believe you said earlier. I am going to refer to these as just
- 14 the 17 drivers, as much as I can.
- 15 MR. SMITH: If I can have a moment, Your Honor, I am going
- 16 to be passing out a number of exhibits, if I can --
- JUDGE POLLACK: Okay, off the record, please.
- 18 MR. SMITH: Thank you, Your Honor.
- 19 [Off the record]
- JUDGE POLLACK: On the record, please.
- 21 O BY MR. SMITH: Now, Mr. Pino, I am going to be going
- 22 through General Counsel's Exhibit No. 11 through 27. I believe
- 23 these are the seventeen drivers who were disciplined.
- 24 (General Counsel's Exhibit No. 11 through 27, marked for
- 25 identification.)

- 1 Q BY MR. SMITH: So, the first one, I am looking at General
- 2 Counsel's Exhibit No. 11(a).
- 3 Is there -- that is Alemu Dawit. Is -- would you like for
- 4 me to give you a moment?
- 5 A Yes, please.
- 6 [Long pause]
- 7 A Got it.
- 8 Q So Alemu Dawit -- is Alemu his last name?
- 9 A I am pretty sure.
- 10 Q Well, let me just ask you some general questions.
- 11 Are you familiar with this document?
- 12 A Yes.
- 13 Q Is that your signature down at the bottom?
- 14 A Yes.
- 15 Q And is this one of the disciplines that was issued for the
- 16 long break?
- 17 A Yes.
- 18 Q And for him, on General Counsel's Exhibit No. 11(a), it
- 19 just says that, "You took more than an hour lunch break."
- Is that the only discipline that was issued to Mr. Alemu
- 21 as a result of the long break?
- 22 A It seems to me that I am missing something here.
- 23 Q Do you know what that is?
- 24 A I think it is falsifying the trip sheet.
- 25 Q And generally, did all of the drivers get a warning like

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- 1 this, and we will try to come back to what you just raised.
- 2 Generally, did all of the drivers get a warning like this
- 3 for taking more than an hour lunch break?
- 4 A Yes.
- 5 Q And then some of them also received a warning for
- 6 falsifying a trip sheet?
- 7 A Yes.
- 8 Q And some of those, that would be a separate sheet --
- 9 A Correct.
- 10 Q But was it every single driver that received a falsified
- 11 trip sheet warning, or was it just some of the seventeen?
- 12 A I think -- I think it was one that -- I think one I did
- 13 waive, but I can't remember which one it was. Because this
- 14 took a little time in processing this -- first, we knew that
- 15 they were in violation of a company policy and then after that,
- 16 we knew that they were falsifying the trip sheet.
- 17 Q So what -- what in this would lead you to believe that he
- 18 falsified the trip sheet?
- 19 A Well, if you look on the mandatory one-hour lunch, 7:30 to
- 20 8:30?
- 21 O Yes.
- 22 A And then you go on the last page which is the GPS, it
- 23 starts at 7:01, he was vacant all the way down to 9:45, so
- 24 maybe 7:00 to -- 7:30 to 8:30 -- yeah, it doesn't match. The
- 25 hours doesn't match.

- 1 Q So is it falsification because the break says 7:30 to 8:30
- 2 and he was actually on break longer than that?
- 3 A Correct, and it doesn't match on the GPS.
- 4 At 7:21 he was stopped at the same location until almost
- 5 9:00, 8:55. Same location without moving; zero speed. That is
- 6 why I am saying, I am think I am missing -- we are missing the
- 7 one for -- for falsifying.
- 8 Q Now assuming the falsification is in there and I -- I can
- 9 double check, but assuming falsification is in there, the
- 10 falsification was flagged because of the long break; is that
- 11 right?
- 12 A Well, that flag -- yeah.
- 13 Q Okay. So if the long break hadn't happened, it wouldn't
- 14 be something that you would normally catch.
- 15 A Correct.
- 16 Q Now, were each of the seventeen drivers -- well, first of
- 17 all, do you know if Mr. Alemu was suspended?
- 18 A I don't recall by looking at his papers, but -- because
- 19 that is the one that I am missing. If I give him a -- for
- 20 falsifying a trip sheet, I most likely suspended him, but I
- 21 don't have that in your exhibit.
- 22 MR. SMITH: If we could have a moment off the record, Your
- 23 Honor?
- JUDGE POLLACK: Off the record.
- 25 [Off the record]

- 1 JUDGE POLLACK: Back on the record.
- 2 MR. SMITH: Your Honor, Counsel and I discussed off the
- 3 record about possibly stipulating to that all of the seventeen
- 4 drivers were suspended, although the length of the suspension,
- 5 we can't determine at this time.
- 6 MR. WINKLER: So stipulated.
- 7 JUDGE POLLACK: Thank you.
- 8 Q BY MR. SMITH: So --
- 9 JUDGE POLLACK: So can we stipulate these documents into
- 10 evidence?
- 11 MR. SMITH: There are a few limited questions I am going
- 12 to ask about each, but it is going to be quick.
- 13 JUDGE POLLACK: Okay, go ahead.
- 14 MR. SMITH: Thank you.
- 15 Q BY MR. SMITH: For Mr. Alemu, do you remember how did
- 16 Nellis find out about him taking a long break?
- 17 A Yeah, I do remember.
- 18 This happened on a Saturday, I think. I got a call at
- 19 home. There was a lot of speculation and a lot of talking
- 20 among drivers, that for a particular day, they were all going
- 21 to go on stoppage and not serve the public, and every time
- 22 people talked, you know, you didn't really pay much attention.
- 23 But then that particular day I knew about all of these
- 24 people because they were -- every hotel was calling for
- 25 service, our accounts were calling for service, and we couldn't

- 1 get anybody to serve our public, our customers.
- 2 So when the -- the dispatchers looked at the GPS, they
- 3 realized that all of these drivers were empty and they were
- 4 always -- I mean all of them were in one location, which was
- 5 somewhere around Twain and Paradise, and none of them were
- 6 answering the radio; we couldn't serve anybody.
- 7 Q And when you said you got this call at home, when did you
- 8 receive this call? What day, if you remember?
- 9 A The same day.
- 10 Q And do you remember about what time?
- 11 A No, I don't remember. It was around 7:00 p.m.
- 12 Q So, had the break --
- 13 A I --
- 14 Q I'm sorry?
- 15 A I just -- I remember just leaving somewhere and it was
- 16 around 6:30 to 7:00 p.m.
- 17 Q So were the drivers already taking a long break at that
- 18 time?
- 19 A There was nobody to be found to pick up calls and the
- 20 hotels were calling constantly. There were no cabs to serve.
- 21 The people waited in line to -- so then they put two and two
- 22 together and they realized, "Hey, this meeting is true. It is
- 23 a true meeting. It is a stoppage." The who town -- the whole
- 24 industry was not working.
- 25 Q So it was more than just Nellis Cab?

- 1 A Oh, yeah. It was all of the companies.
- 2 Q So, when -- who was it that called you?
- 3 A I think it was Jo Jimerson.
- 4 Q So --
- 5 A She is my dispatcher.
- 6 Q Can you spell that out, please?
- 7 A J-i-m-e-r-s-o-n.
- 8 Q Thank you.
- 9 Now, when you said that is when you found out that it was
- 10 true, had you heard that this was going to happen before that
- 11 then?
- 12 A Yes.
- 13 Q When had you heard it was going to happen?
- 14 A I don't recall exactly, but maybe days, a week; drivers
- 15 talk. I talk to the drivers. Some of the drivers were
- 16 informing me that there was going to be a stoppage on that
- 17 either Friday or Saturday.
- 18 Q Now, for any one of the drivers in particular, was there
- 19 any particular call for, say, like for Mr. Alemu, or was it
- 20 just a generalized check once they started looking at GPS?
- 21 A No, they just look at the GPS. The GPS represented is by
- 22 little dots, and when they are green they are vacant. When
- 23 they are red, they are hired. And all of these green lights
- 24 were all at one place, and then they were -- I instructed Joe
- 25 to start pulling GPS because I didn't know that it was going on

- 1 and I timed the GPS was even working, it was showing that they
- 2 were all there.
- 3 Q So was it only the drivers that were in that one location?
- 4 A No, I sent my Road Supervisors to verify that.
- 5 Q And for -- and what did they verify?
- 6 A Just to see what was going on. I mean, if there was a
- 7 Nellis driver parked in that -- it was kind of like a meeting.
- 8 It was in a parking lot.
- 9 Q And what did he report back?
- 10 A He said, "Yeah, there is a lot of Nellis drivers there."
- 11 Q Did he say that it was just Nellis drivers that were
- 12 there?
- 13 A No, from all companies.
- 14 Q Okay, and was that at the Ethiopian restaurant there?
- 15 A I don't know exactly where it -- where they were.
- 16 Q And did you -- I believe you said Twain and sunset?
- 17 A That is what the GPS report pointed us.
- 18 Q And then for each of these documents, did you have a
- 19 chance when I was passing these out, to look at them?
- 20 A Yeah, I glanced at a couple of them.
- 21 Q So, for each of the documents, is it fair to say that the
- 22 documents that are attached with the coversheet is the
- 23 justification that you used for the discipline? It supports
- 24 the coversheet, the discipline sheet?
- 25 A Yeah. These drivers were in violation of company policies

- 1 by taking more than a one-hour lunch, and also by -- in
- 2 violation of the NAC and NRS, that they need to be out there
- 3 with a medallion attached to their cab to serve the need of the
- 4 riding public, and they were not doing that for three hours,
- 5 some of them.
- 6 Q So, other than the disciplines for the long break, where
- 7 it says, "Taking more than a one-hour lunch break," and the
- 8 falsifying trip sheets, are you aware of any other discipline
- 9 that was issued to the seventeen drivers?
- 10 A I think we suspended them all on a suspension, I think was
- 11 the only thing.
- 12 Q I'm sorry, in addition to the suspension. I didn't mean
- 13 to leave that out.
- 14 So, what was put on the notice was all just taking more
- 15 than an hour break and the falsifying trip sheets, as far as
- 16 you remember?
- 17 A As far as I remember, yes.
- 18 Q So then the -- when we are looking at General Counsel's
- 19 Exhibit No. 11(d), is this the address that you are talking
- 20 about where it says 845 East Twain?
- 21 A I am looking at 853.
- 22 Q I'm sorry, 853 East Twain.
- 23 A Yes.
- 24 Q Now, do you know -- some of the drivers were called back
- 25 to the yard, weren't they?

- 1 A I don't remember that. I wasn't there, so --
- 2 Q Did you instruct anyone to call the drivers back that were
- 3 on the long break?
- 4 A No.
- 5 Q So you don't know one way or the other whether they were
- 6 called back or not?
- 7 A Right. I don't know. All I knew was that they were in
- 8 that location.
- 9 Q Okay.
- 10 MR. SMITH: And I would like to offer General Counsel's
- 11 Exhibit No. 11(a) through (d), Your Honor.
- 12 MR. WINKLER: No objection.
- 13 JUDGE POLLACK: Okay, General Counsel's Exhibit No. 11(a)
- 14 through (d) is received.
- 15 (General Counsel's Exhibit No. 11(a) through 11(d), received
- 16 into evidence.)
- 17 MR. SMITH: Thank you, Your Honor.
- 18 Q BY MR. SMITH: And then I believe we have the same thing
- 19 in General Counsel's Exhibit No. 12(a) through (d).
- 20 Mr. Amede received the warning for the one-hour lunch
- 21 break?
- 22 A Yes.
- 23 Q And that is your signature on General Counsel's Exhibit
- 24 No. 12(a)?
- 25 A Yes.

- 1 Q And for each one of these, and I didn't ask this on
- 2 General Counsel's Exhibit No. 11, but the trip sheet is the
- 3 trip sheet for that day, also supporting the discipline; is
- 4 that right?
- 5 A That is correct.
- 6 Q And then, just so I make sure it is clear, although the
- 7 GPS address that we are looking at, 12(d) shows a slightly
- 8 different address? It is normal for the GPS address to vary by
- 9 a few numbers, isn't it?
- 10 A That is correct.
- 11 MR. SMITH: And I would like to offer General Counsel's
- 12 Exhibit No. 12(a) through 12(d).
- 13 MR. WINKLER: No objection.
- 14 JUDGE POLLACK: General Counsel's Exhibit No. 12(a)
- 15 through (d) are received.
- 16 (General Counsel's Exhibit No. 12(a) through 12(d), received
- 17 into evidence.)
- 18 Q BY MR. SMITH: Now, looking at General Counsel's Exhibit
- 19 No. 13(a), 13(a), and then (c), (d), and (e), are the same as
- 20 we have looked at essentially for General Counsel's Exhibit No.
- 22 A Yeah, with the exception that I say on this, I am issuing
- 23 the warning for falsification.
- 24 Q And --
- JUDGE POLLACK: But 13 is there?

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- 1 THE WITNESS: Yes, 13 is there, but --
- 2 Q BY MR. SMITH: So General Counsel's Exhibit No. 13(b),
- 3 assuming that the rest of them have a trip sheet warning, it
- 4 would be the same -- falsifying the trip sheet, it would be
- 5 similar to this; is that correct?
- 6 A Yes.
- 7 Q And on each of these, and I didn't ask it for General
- 8 Counsel's Exhibit No. 11 and 12, they were also -- the drivers
- 9 were also warned that if this happens again, it would be
- 10 termination.
- 11 A That is correct.
- 12 Q Now, since we have got falsification of trip sheet on this
- 13 one, can you walk me through what is the falsification?
- 14 A Which number are you --
- 15 Q I'm sorry, General Counsel's Exhibit No. 13.
- 16 A Okay.
- 17 Q So we are looking General Counsel's Exhibit No. 13(b) as
- 18 the falsification.
- 19 A Okay.
- 20 Q Okay, and then how do you see -- where is the
- 21 falsification on this?
- 22 A Okay, he says that he took lunch from 7:30 to 8:30. This
- 23 is a different format than the other ones.
- 24 This driver was not at the location -- at the location
- 25 that he wrote here, where you cannot see this, where it is

- 1 highlighted.
- 2 Q Okay.
- 3 A So that is a falsification --
- 4 JUDGE POLLACK: What page?
- 5 MR. SMITH: I believe that is (d); is that right?
- 6 THE WITNESS: (d).
- JUDGE POLLACK: Okay.
- 8 MR. WINKLER: The highlighting is --
- 9 MR. SMITH: There is highlighting that is there.
- 10 Q BY MR. SMITH: And I believe it says that the pick-up is
- 11 Excelsior, and the drop-off is Key-something, and the fare is
- 12 \$12.10, but it is hard to make out the --
- 13 A But he was -- he was nowhere near there. He was sitting
- 14 at the Taco Bell on Tropicana -- he told me he -- he didn't go
- 15 to the meeting. I remember this one. He did not go to the
- 16 meetings, the so-called meeting or whatever it was, the
- 17 stoppage. He went to Taco Bell because he was afraid that
- 18 these drivers were checking everybody and that they were going
- 19 to do something against him because he was picking up
- 20 passengers, so he decided to go to Taco Bell.
- 21 Q So, do you know how he was flagged if the rest of the
- 22 drivers were flagged by being at that one location? Do you
- 23 know how he was flagged?
- 24 A Because he is one that never responded on the radio. We
- 25 were calling everybody.

- 1 Q So is that one of the ways that you learned is by the lack
- 2 of response on the radio?
- 3 A We were calling because the hotels needed service and we
- 4 were calling and calling everybody. And all of a sudden, the
- 5 fact that this guy was not in the same location, but he was
- 6 somewhere else for a long period of time, which was Taco Bell.
- 7 Q So, was everyone that didn't respond to the radio, did
- 8 they all get disciplined?
- 9 A Only the ones that when we looked -- that they didn't
- 10 respond to their radio when they were taking more than one-hour
- 11 lunch.
- 12 Q Now, how is it normally handled when somebody is called on
- 13 the radio and they don't answer?
- 14 A When you call somebody on the radio and he doesn't answer,
- 15 we don't do anything, but after three hours you call the same
- 16 person and he doesn't answer, we want to know where he is at.
- 17 Q And normally that doesn't happen very --
- 18 A No, it doesn't happen very often. I don't really remember
- 19 it ever happening before.
- 20 Q So, do you remember the last time you issued discipline
- 21 for not answering a radio?
- 22 A I don't remember. It has been a long time.
- 23 Q Now, the -- the falsification you said is because the trip
- 24 sheet. Is that because the trip sheet says he was some place
- 25 where he said he was not?

- 1 A But, it also -- right, and the time of the lunch.
- MR. WINKLER: And Your Honor, I have colored copies where
- 3 you can read where it is blacked out, if you want to take a
- 4 look at all of this.
- 5 MR. SMITH: Maybe I could offer a stipulation as far as
- 6 what is on there.
- 7 JUDGE POLLACK: Okay.
- 8 MR. SMITH: Or if you wanted to read it, either way. I
- 9 think we are going to have a hard time making out some of the
- 10 information anyway.
- 11 [Long pause]
- MR. SMITH: I believe that looking at -- are we still on
- 13 the record?
- 14 THE COURT REPORTER: Yes.
- 15 JUDGE POLLACK: Yes.
- 16 MR. SMITH: When looking at Line No. 22, I believe it is
- 17 the second column, I believe it is 6:55, although it is hard to
- 18 make out, and then the next column it is Monte Carlo. The next
- 19 column is MGM, and then the fare is \$8.90.
- Then, looking at Line No. 23, it is hard to make out, but
- 21 it looks like 9:00, followed by Excelsior, followed by --
- 22 again, I don't think we can make it out even on the colored
- 23 copy.
- 24 THE WITNESS: I can tell you what it is. It is Excalibur,
- 25 Treasure Island, to Cosmopolitan, and then the area to the

- 1 south point.
- JUDGE POLLACK: Okay.
- 3 MR. SMITH: I would agree to that as a stipulation.
- 4 JUDGE POLLACK: Okay.
- 5 [Long pause]
- 6 Q BY MR. SMITH: Now, on this one we are looking at (f) and
- 7 (g). We are looking at 13 (f) and (g.) This has extra pages
- 8 attached to it that were not attached to some of the other
- 9 sheets. What is this?
- 10 A This is just a -- it is a GPS. It is just a different
- 11 format that gives you longitude -- it is just a different
- 12 format. I am not very -- I am not an expert on GPS, but it is
- 13 -- there are two reports that you can print, where this
- 14 actually give you a closer -- how can I say this? Every five
- 15 minutes if the car is moving, he can tell you exactly the
- 16 address where he is passing by, if it is moving. If it is not
- 17 moving, he give you more like a distance and -- it is just the
- 18 same thing as No. (e). I don't know why they gave me both, but
- 19 -- on this particular one, but it is the same thing as No. (e).
- 20 O So it has got to be something that normally isn't pulled
- 21 up unless there is some sort of --
- 22 A Right. And the only thing this one, (f), does not give
- 23 you is -- that is probably why we don't use them very much, if
- 24 the guy is hired or not hired. That is the difference between
- 25 the --

- 1 Q That was the "VE" and the "HE" we were looking at on the
- 2 driver detail?
- 3 A Right.
- 4 Q Thank you.
- 5 MR. SMITH: I would like to offer General Counsel's
- 6 Exhibit No. 13(a) through 13(g).
- 7 MR. WINKLER: No objection.
- 8 JUDGE POLLACK: Okay, General Counsel's Exhibit No. 13(a)
- 9 through 13(g) are received.
- 10 (General Counsel's Exhibit No. 13(a) through 13(g), received
- 11 into evidence.)
- 12 Q BY MR. SMITH: And looking at General Counsel's Exhibit
- 13 No. 14(a) through 14(c), the -- Mr. Bekele was also another
- 14 driver that was one of the ones that was disciplined?
- 15 A Yes.
- 16 Q And for each of these drivers, if you would please just
- 17 let me know, if there is another person with the same name, but
- 18 I would imagine that all of these drivers' names are pretty
- 19 unique?
- 20 A No. This is -- every time we do this, we go with an
- 21 employee list, so nobody has the same name, that I gave a
- 22 written warning. Somebody might have made copies of the thing,
- 23 but not me.
- 24 Q And again, looking at 14(c), he was one of the drivers
- 25 that was at the Twain address?

- 1 A Yep. Yes.
- 2 MR. SMITH: I would move to introduce General Counsel's
- 3 Exhibit No. 14(a) through (c).
- 4 MR. WINKLER: No objection.
- 5 JUDGE POLLACK: General Counsel's Exhibit No. 14(a)
- 6 through 14(c), received.
- 7 (General Counsel's Exhibit No. 14(a) through 14(c), received
- 8 into evidence.)
- 9 Q BY MR. SMITH: And then looking at General Counsel's
- 10 Exhibit No. 15(a), again this is your signature, the same type
- 11 of discipline as the other employees that we have looked at,
- 12 right?
- 13 A Yes.
- 14 Q And then we -- for Mr. Beyene, we have a falsifying the
- 15 trip sheet.
- 16 A Yes.
- 17 Q Now, on this one, can you tell me what the falsification
- 18 is?
- 19 A Okay, the -- it is again, highlighted. It is Trip No. 5
- 20 where he says that he took an hour lunch, when he was actually
- 21 somewhere else on Decatur. The driver was at the same
- 22 apartment, Hacienda and Decatur, and also on (f), shows you
- 23 that he was vacant.
- 24 Q Okay. Now with that being the rides are log, that -- when
- 25 the TA looks at a trip sheet, they look to make sure that the

- 1 rides are logged, right?
- 2 A Yes.
- 3 Q So the TA probably -- well, do you know would the TA catch
- 4 this as a falsification?
- 5 A They get a ticket.
- 6 Q If they catch it --
- 7 A Yeah.
- 8 Q -- at the time, but if the TA were to look at this after
- 9 the fact, would they have any way, of just on the trip sheets,
- 10 knowing they falsified their log?
- 11 A Just on the trip sheet, no.
- 12 Q And they don't look at the GPS logs, do they?
- 13 A They know that we have it. We have been asked for -- when
- 14 they investigated a driver, we have been asked for a GPS log.
- 15 Q But there is no citation for being inaccurate to the GPS
- 16 log; is that right?
- 17 A Oh, yeah.
- 18 Q From the TA?
- 19 A I had one driver -- it was something else, and they
- 20 figured out he also falsified a trip sheet, and on top of the
- 21 other tickets that he was being investigated, he got one for
- 22 falsifying. In other words, the TA -- it is not rare that they
- 23 ask for it, for the GPS. Not all of the time, but sometimes
- 24 they also need a GPS with a trip sheet.
- 25 Q Okay. Now, so if their trip sheets are wrong in any way,

- 1 it could be falsified; is that right?
- 2 A Oh, yeah. Yes.
- 3 MR. SMITH: So, I would like to offer General Counsel's
- 4 Exhibit No. 15(a) through 15(f).
- 5 MR. WINKLER: No objection.
- 6 JUDGE POLLACK: General Counsel's Exhibit No. 15(a)
- 7 through 15(f) is received.
- 8 (General Counsel's Exhibit No. 15(a) through 15(f) is
- 9 received.)
- 10 MR. SMITH: Now, I am going to change gears here, and
- 11 actually, I think I could offer the remainder up through
- 12 General Counsel's Exhibit No. 27. I don't think there is going
- 13 to be anything new in any of the trip sheets, or in any of
- 14 these disciplines, or I can go through them individually, if
- 15 you --
- JUDGE POLLACK: Well, let's see if Mr. Winkler would
- 17 stipulate to the receipt of General Counsel's Exhibit No. 16
- 18 through 27.
- 19 MR. WINKLER: I will stipulate to the receipt of these,
- 20 yes.
- JUDGE POLLACK: Okay, thank you.
- 22 General Counsel's Exhibit No. 16 through General Counsel's
- 23 Exhibit No. 27 are received.
- 24 (General Counsel's Exhibit No. 16 through General Counsel's
- 25 Exhibit No. 27, received into evidence.)

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- 1 MR. SMITH: Thank you, Your Honor.
- 2 [Long pause]
- 3 Q BY MR. SMITH: What I have passed out is a number of
- 4 disciplines that General Counsel's Exhibit No. 6(a) through No.
- 5 6(au), which were provided under subpoena.
- 6 (General Counsel's Exhibit No. 6(a) through 6(au), marked for
- 7 identification.)
- 8 Q BY MR. SMITH: So, in looking at General Counsel's Exhibit
- 9 No. 6(a), this is -- the discipline that was issued, was for
- 10 the trip sheet was not clocked out; is that right?
- 11 A Yes.
- 12 Q And that was for Abiy Amede for his trip sheet of November
- 13 19th of 2011; is that right?
- 14 A Yes.
- 15 Q Okay. And if they lie to you in any way, lie to Nellis on
- 16 a trip sheet, then that is falsification.
- 17 A If they lie, yeah.
- 18 Q Okay. Now, looking at General Counsel's Exhibit No. 6(b),
- 19 his mandatory one-hour lunch break is listed as 6:30 to 7:30;
- 20 is that right?
- 21 A What number are you looking at?
- 22 O General Counsel's Exhibit No. 6(b). The second page.
- 23 And just to make sure, this is Abiy Amede's trip sheet for
- 24 that day, isn't it?
- 25 A Correct.

- 1 Q Okay. Now, he lists on his trip sheet his lunch break is
- 2 6:30 to 7:30.
- 3 A Correct.
- 4 Q But he also has a ride logged at 7:18.
- 5 A Correct.
- 6 Q Isn't that falsifying a trip sheet?
- 7 A That it is.
- 8 Q Okay, and now on General Counsel's Exhibit No. 6(a), it
- 9 doesn't mention anything about falsifying a trip sheet; is that
- 10 right?
- 11 A General Counsel's Exhibit No. 6(a)? No, it doesn't.
- 12 Q And you have reviewed this discipline before it was
- 13 issued, right?
- 14 A This is reviewed by the girls upstairs, not by me.
- 15 Q Is that your signature on General Counsel's Exhibit No.
- 16 6(a)?
- 17 A Yes. The girls when they go through the trip sheets, as I
- 18 explained to you before, they look for readings, clocking, make
- 19 sure that the lunch hour is there, but they do not check the
- 20 actual trip sheet, and they filled out the top part where this
- 21 quy did not clock out, and they -- and I signed this. I don't
- 22 review this trip sheet.
- 23 Q You don't look at the documents that support the
- 24 discipline that you issued?
- 25 A The only thing that I sign here and that I support is what

- 1 they tell me, that he did not clock out, so, yes, I do look at
- 2 the document, for the particular reason why I am giving a
- 3 written warning.
- 4 Q Okay, so for the fact that he wrote a trip during his
- 5 break, that is just something that you just missed?
- 6 A I didn't check for that.
- 7 Q Okay. Now, for the seventeen drivers, assuming that each
- 8 one of those was disciplined for the falsifying a trip sheet,
- 9 that was something that you checked, wasn't it?
- 10 A I did, because it was a very different situation. It was
- 11 unique, and I did -- it was me who checked it, not the girls,
- 12 so it was a totally different issue. This is a written -- this
- 13 is something that the girls check up there and I sign. When I
- 14 see obviously this guy did not block out, I signed the written
- 15 notice, but that is it because that is all it is.
- On the day of the stoppage was something so unique that I
- 17 did check everything out.
- 18 Q You didn't have the girls go check to see if --
- 19 A I did it.
- 20 Q Okay.
- 21 A Because it was an event where -- to a big magnitude that
- 22 affected the rider public. It wasn't just a simple thing that
- 23 this guy just put different hours there. It was a lot more of
- 24 that.
- 25 Q Wouldn't falsifying trip sheets also affect the public?

- 1 A Correct. That is why I said I checked it, because it was
- 2 a big event.
- 3 Q Okay. So, what about credit cards. Does that -- if the
- 4 drivers don't have the credit cards signed, does that affect
- 5 the public?
- 6 A That affect us from -- from collecting from the third
- 7 party that we collect credit cards. In other words, it is
- 8 pretty hard to collect from them.
- 9 Q So, that is pretty important, isn't it?
- 10 A Oh, yes, in any business, I guess it is.
- 11 Q Okay, so if we look at General Counsel's Exhibit No. 6(d),
- 12 we have Driver, Abiy Amede, and this is a discipline for a
- 13 credit card receipt not signed.
- 14 A That is correct.
- 15 O Now --
- 16 A This --
- 17 Q Go ahead.
- 18 A This is also looked at by the girls.
- 19 Q So do you know why they or you missed, again looking at
- 20 the mandatory lunch break, it says 8:00 to 9:00, but then he
- 21 has rides logged between 8:00 and 9:00?
- 22 A I didn't check that.
- 23 Q I'm sorry?
- 24 A I am not the one who checked that.
- 25 Q Do you know whether they checked that?

- 1 A I just told you, they didn't. They just checked other
- 2 stuff.
- 3 Q Okay. But doesn't Nellis' policy require that during that
- 4 break time, that they logged, that they are required to be on
- 5 break?
- 6 A That is correct.
- 7 Q And they are actually not allowed, I believe the way the
- 8 rule reads, they are not allowed to work more than eleven
- 9 hours; is that right?
- 10 A That is correct.
- 11 Q And there is actually a TA -- an NAC and NRS requirements
- 12 that restrict their ability to work beyond a certain number of
- 13 hours in a day; is that right?
- 14 A Yes.
- 15 Q So, if they go beyond working the eleven hours, does that
- 16 violate the TA regulations?
- 17 A I don't think it is a TA violation. I think it is a Labor
- 18 violation.
- 19 Q So, in addition to it being a violation of Nellis
- 20 policies, you believe --
- 21 A Right.
- 22 Q -- it is also a violation for Labor?
- 23 A Yes.
- 24 Q You mean, within Labor laws?
- 25 A I think the under the Labor law, they need to take an hour

- 1 lunch, I think.
- 2 Q But they are not -- you said the girls. Who are the girls
- 3 you are talking about?
- 4 A We have two girls up there that enter 200 trip sheets a
- 5 day, and this is the girls that enter everything I already
- 6 discussed with you, in the beginning of this; readings, money,
- 7 anything that is -- that could flag them, and the reason why
- 8 they did not -- they don't check on the -- on the time of the
- 9 lunch, the only thing they concentrate is on filling the box,
- 10 what time they took the lunch. They don't check if the lunch
- 11 was exactly in that time.
- 12 Q So, if they lie about what time they are on their lunch,
- 13 is there any consequence?
- 14 A If I -- if I know, yeah.
- 15 Q Okay. Now, just so -- we have also got some new
- 16 information on this, and I would like to cover that.
- When we are looking at General Counsel's Exhibit No. 6(g),
- 18 we have what looks like receipts. Is that the unsigned credit
- 19 card receipts?
- 20 If you would look at the lower right-hand corner, there is
- 21 a(q).
- 22 A Yeah, those are the non-signed credit card receipts.
- 23 Q Now looking at (h) and (i), again, this is a -- this is a
- 24 combination of discipline for several days on (h); is that
- 25 right?

- 1 A Correct.
- 2 Q Okay. And one of them is for a trip sheet not clocked
- 3 out.
- 4 A Correct.
- 5 Q And it mentions April 21st. Looking at General Counsel's
- 6 Exhibit No. 6(i) is the corresponding trip sheet for that
- 7 discipline on April 21st; is that right?
- 8 A Yeah, he didn't clock out.
- 9 Q Okay. Now, again, he has got a mandatory one-hour lunch
- 10 recorded from 6:30 to 7:30, but is recording rides during that
- 11 time; is that right?
- 12 A Yep.
- 13 Q And on General Counsel's Exhibit No. 6(h), again, that is
- 14 your signature?
- 15 A Yes, it is.
- 16 Q Now, looking at (j), General Counsel's Exhibit No. 6(j),
- 17 this is a low book statement.
- 18 Is that a standard for that Nellis uses?
- 19 A Yes.
- 20 Q And do you know this driver, Abraham Dirar?
- 21 A I -- I would have to look at his face to remember him.
- 22 Q So you are familiar with the name?
- 23 A Oh, yeah.
- 24 Q Okay. And is -- where it says, "The reason for below
- 25 average," is that what a driver would fill out regarding

- 1 whatever the low book is?
- 2 A That is correct.
- 3 Q Okay.
- 4 JUDGE POLLACK: Sir, which number was this?
- 5 MR. SMITH: General Counsel's Exhibit No. 6(j).
- 6 JUDGE POLLACK: Thank you.
- 7 Q BY MR. SMITH: And then do you recognize the signature of
- 8 the Company representative down at the bottom?
- 9 A Yes.
- 10 Q And who is that?
- 11 A That is the next -- the Office Supervisor, Ron Pomeroy.
- 12 Q Was he equivalent to your position?
- 13 A No. He was below me.
- 14 Q But somebody in supervision, as you recall?
- 15 A Yes.
- 16 Q Now, looking at General Counsel's Exhibit No. 6(k) and
- 17 6(1) -- actually General Counsel's Exhibit No. 6(k) again, we
- 18 have got a multiple day warning notice; is that right? We have
- 19 got May 25, 26th, and --
- 20 A Yes, credit card receipts not signed by the customer.
- 21 Q Okay, and that is your signature on General Counsel's
- 22 Exhibit No. 6(k)?
- 23 A Yes.
- 24 Q Now, on General Counsel's Exhibit No. 6(1), this is one of
- 25 the trip sheets for that discipline, for May 27th; is that

- 1 right?
- 2 A Yes.
- 3 Q And again, we have got the mandatory one-hour lunch break
- 4 from 8:00 to 9:00, but trips logged during that lunch break; is
- 5 that right?
- 6 A Correct.
- 7 Q And that violates Nellis' policies, doesn't it, for not
- 8 taking the break?
- 9 A I don't know if he took the break or not. He say he had
- 10 rides, but I don't know if he did or not.
- 11 Q So, I mean, by the trip sheet, it looks like --
- 12 A Oh, by the trip sheet, yeah, he didn't.
- 13 Q Okay, so doesn't that violate Nellis' policies that he
- 14 didn't take that break?
- 15 A Yeah, that is falsifying the trip sheet.
- 16 Q And that just wasn't caught --
- 17 A Right.
- 18 Q -- on General Counsel's Exhibit No. 6(k)?
- 19 A That is correct.
- 20 Q And then the same thing for General Counsel's Exhibit No.
- 21 6(n). This is one of the other trip sheets that goes with that
- 22 discipline?
- 23 A What?
- 24 Q General Counsel's Exhibit No. 6(n).
- 25 A The credit card receipts.

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- 1 Q The trip sheet should be 6(n), and then --
- 2 A Oh, (n).
- 3 Q Yes, (n), as in Nancy.
- 4 A Oh, Nancy, okay. Yeah, it doesn't show here, but the
- 5 same, yes.
- 6 Q Picking up fares during his lunch?
- 7 A That is what it shows.
- 8 Q And General Counsel's Exhibit No. 6(p) and (q), and to
- 9 shorten this up a little bit, I am looking at the same thing,
- 10 picking up fares during the mandatory lunch break?
- 11 A That is correct.
- 12 MR. SMITH: Your Honor, if I could have a couple moments
- 13 off the record, please?
- JUDGE POLLACK: Off the record, please.
- 15 [Off the record]
- 16 JUDGE POLLACK: Back on the record, please.
- General Counsel's Exhibit No. 6(a) through 6(au) are
- 18 received.
- 19 (General Counsel's Exhibit No. 6(a) through 6(au), received
- 20 into evidence.)
- MR. SMITH: Thank you, Your Honor.
- 22 Q BY MR. SMITH: So, the seventeen drivers, none of them
- 23 were disciplined for productivity, were they?
- 24 A I don't recall.
- MR. SMITH: Could I have another moment off the record,

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- 1 Your Honor?
- JUDGE POLLACK: Off the record, please.
- 3 [Off the record]
- JUDGE POLLACK: Back on the record, please.
- 5 MR. SMITH: Your Honor, I would offer a stipulation that
- 6 of the discipline issued to the drivers in General Counsel's
- 7 Exhibit No. 11 through 27, that there was no mention of
- 8 discipline for low productivity.
- 9 MR. WINKLER: I will so stipulate.
- 10 JUDGE POLLACK: Thank you. The stipulation is received.
- 11 MR. SMITH: Thank you, Your Honor.
- 12 Q BY MR. SMITH: Now, if I show you General Counsel's
- 13 Exhibit No. 10, and I am looking at 10(d), I am looking at No.
- 14 33. That is Ubraisis [phonetic]. He was one of the seventeen
- 15 drivers disciplined, wasn't he?
- 16 A [No response]
- 17 Q I am looking at General Counsel's Exhibit No. 10(d), No.
- 18 33, on the right.
- 19 A (d)?
- 20 Q Yes, (d).
- 21 A Correct.
- 22 Q So, by this, he actually was high enough in book that he
- 23 would not have received a discipline; is that right?
- 24 A That is correct.
- 25 Q And is the same thing true for No. 45, which is Hiallis

- 1 Salasi [phonetic]?
- 2 A That's correct.
- 3 Q And he was also -- he or she was also a driver that was
- 4 one of the seventeen; is that right?
- 5 A I don't -- I don't have them all memorized.
- 6 Q Do you know if those two drivers were able to finish
- 7 working the rest of their shifts?
- 8 A I don't know that. I don't recall that.
- 9 Q Do you know if some of the drivers that -- and I think you
- 10 may have answered this already, that were not allowed to finish
- 11 their shift?
- 12 A Yeah, you told me that earlier. I don't remember that
- 13 because I wasn't there.
- 14 Q Now, following this, this long break, you met with some of
- 15 the drivers before they returned to work, didn't you?
- 16 A Yes.
- 17 Q Where did you meet with them?
- 18 A I met with them in my office, the middle conference room,
- 19 I think it was.
- 20 Q So -- I just want to make sure I am clear. You said a
- 21 conference room in your office. Is that the same thing or is
- 22 that --
- 23 A No, it is right across from my office, a separate
- 24 conference room.
- 25 Q And do you remember which of the drivers were called in

- 1 for a meeting?
- 2 A I remember I called all of the drivers to give them
- 3 written warnings, but I don't remember when did I call them or
- 4 who did I call or what day did I call or what day did they come
- 5 in, or what time they came in. I think they all came in the
- 6 same day, but they did not come in all of them at the same
- 7 time.
- 8 Unless I can look on my written warnings, I don't even
- 9 remember if it was the same day.
- 10 Q Okay.
- 11 A Yeah, some of them were 2-7, 2-6, so no, I couldn't tell
- 12 you exactly who were they. I know I talked to all of them
- 13 though.
- 14 Q And Abiy Amede was the first one that you talked to,
- 15 wasn't he?
- 16 A I don't know. I don't remember.
- 17 O So who -- did you remember meeting with Abiy Amede?
- 18 A Yeah, I gave him the written warning.
- 19 Q Do you remember who was with you when you met with Abiy
- 20 Amede?
- 21 A It was me. I don't know if there were other drivers
- 22 there, I can't remember. But it was probably my assistant,
- 23 Sandy.
- 24 Q Did Ray Chenoweth join you for some of the meetings?
- 25 A He was in -- he walked in one meeting, I guess. Yes, he

- 1 was in one.
- 2 Q Do you remember if he joined you in the meeting with Abiy
- 3 Amede?
- 4 A That I don't -- I don't remember.
- 5 Q So you only recall him joining for one meeting instead of
- 6 several?
- 7 A Yes.
- 8 Q And didn't you meet with the drivers individually?
- 9 A No, like I say. Sometimes three of them came in at once,
- 10 four of them came in at once.
- 11 Q But you don't remember which one --
- 12 A I don't remember which one they were. I don't -- I wasn't
- 13 taking notes or keeping records.
- 14 Q Okay, and, now, when you met with the drivers, you told
- 15 them that if this happens again, there would be terminations;
- 16 is that right?
- 17 A Yes, I did.
- 18 Q And you also asked them why they took the long break,
- 19 didn't you?
- 20 A Yes.
- 21 Q And at the time, when you called them in, you believed
- 22 that they had done something wrong.
- 23 A That is correct.
- 24 Q And --
- 25 A I had my information with me already. I had my GPS -- I

- 1 already did my research.
- 2 Q So had you already decided what the discipline would be
- 3 before you talked to the drivers?
- 4 A Yes.
- 5 Q Okay, and did you ask who organized this break, this long
- 6 break?
- 7 A No.
- 8 Q That was something that you weren't curious about, how
- 9 this came about?
- 10 A Well, I knew that it was something to do with opposing
- 11 allocations, but I really don't care who organized the break.
- 12 It doesn't matter to me who organized the meeting.
- 13 Q Now, along with telling them that additional violations
- 14 would be terminations, did you also tell them that this was
- 15 their final written warning?
- 16 A Yeah, I think I wrote on some of them.
- 17 Q Now, do you remember Ray Chenoweth asking the drivers, or
- 18 at least the driver, how long he worked there?
- 19 A I remember one time Ray walked in to one of the meetings
- 20 -- not a meeting, but when I was doing this, and all he asked
- 21 was, "How long you worked here," and the guy said something,
- 22 three or four years, and he said, "Did you get a bonus?" The
- 23 driver said, "Yes."
- 24 "Did you like the bonus?"
- 25 And he said, "Yes."

- 1 That is all he say. He walked out.
- 2 Q Did he say that the bonus was like a gift from the
- 3 Company?
- 4 A No. He just asked him if he liked the bonus.
- 5 Q And did he also tell the drivers that the drivers at
- 6 another company, Yellow-Checker-Star, had only received a
- 7 \$25.00 bonus?
- 8 A I don't recall that.
- 9 Q So he may or may not have said that?
- 10 A I don't think he said it.
- 11 Q And did one of you ask the drivers if they liked working
- 12 at Nellis?
- 13 A He did. He said, "Do you like working at Nellis?"
- 14 He said, "Yes," after he asked him, "How long you been
- 15 here? Do you like working here? Did you get a bonus? It was
- 16 a good bonus?"
- 17 That is all he asked.
- 18 Q Okay. Now, is there a recording device in the office in
- 19 that conference room?
- 20 A No.
- 21 Q There is nothing that has tape reels on it?
- 22 A No.
- 23 Q Now, we covered how Nellis found out about the long break.
- 24 What do you remember about what these reports were, about
- 25 picking up customers, or what specifically was recorded, if you

- 1 can remember?
- 2 A At the time of this stoppage?
- 3 Q Yes.
- 4 A Well, I remember my dispatcher calling me at home and
- 5 saying, "This is crazy. The whole town is calling for cabs,
- 6 and all of the cabs have a big slowdown. I guess they are all
- 7 on strike or something and I don't know what to do." That was
- 8 the day of the stoppage.
- 9 Q So to the extent that you haven't, you know, already said
- 10 so, what was done in response when you found out?
- 11 A Well, we -- we did our research and we gave our guys
- 12 written warnings, suspensions.
- 13 Q But I am talking about right then during the shift. You
- 14 know, was there anything additional that was done to react to
- 15 this, other than what you have already --
- 16 A No, all I did different was I sent my Road Supervisor to
- 17 confirm that there was some of our drivers there, because our
- 18 GPS was telling us that they were all there -- that a lot of
- 19 them were there, and I didn't even want them -- I called them
- 20 back and said, "I don't even want you to get close," because it
- 21 was kind of like a violent type of deal according to my Road
- 22 Supervisor, so they just drove by and they told me there was a
- 23 lot of Nellis cabs -- a lot of other cabs from all of the other
- 24 companies.
- 25 Q Now, what do you mean, "kind of violent?" What did he

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- 1 say?
- 2 A Well, there was -- it was on the news. Mr. Shrank
- 3 [phonetic], the Director of Operations for Yellow-Checker-Star,
- 4 he went there that day, which is a company that has a union
- 5 contract, and he was bombarded with -- with water bottles.
- 6 Q So did any of your drivers get hospitalized?
- 7 A Did any what?
- 8 Q Did any of your drivers get hospitalized?
- 9 A Went to the hospital, you mean?
- 10 Q Yes.
- 11 A Not my driver, but I am glad --
- 12 Q No, just your drivers.
- 13 A No.
- 14 Q Did anyone get injured, your drivers?
- 15 A No, not to my knowledge.
- 16 Q Anyone in your supervision or management?
- 17 A Nope.
- 18 Q So, if there was any violence, it wasn't against your
- 19 company; is that right?
- 20 A I couldn't determine that.
- 21 Q Nothing that you were reported --
- 22 A Well, I mean they reported what they saw, but I can't say
- 23 it wasn't against my company.
- 24 Q Nothing that was experienced.
- 25 A That is why I told my supervisor, "Don't get close," after

- 1 I found that out. "Don't get close to the area because there
- 2 is a lot of violence going on."
- 3 Q So, when the drivers, whether it was at the end of their
- 4 shift or whether they came back early, they were told to go
- 5 home and come back Monday, weren't they?
- 6 A I -- yes. So some were off on Sunday, and I had to do my
- 7 research.
- 8 Q And they had to call in to find out what they were
- 9 supposed to do, right?
- 10 A [No audible response]
- 11 Q But they didn't do that, did they? Didn't the drivers
- 12 come up to the yard on Monday, as a group?
- 13 A I think they did.
- 14 Q Okay.
- 15 A Yeah, I am not sure, but I think they did.
- 16 Q But you didn't meet with the group of seventeen drivers,
- 17 right?
- 18 A No, not on Monday.
- 19 Q I'm sorry, not as a group.
- 20 A No.
- 21 O Was there any time that you met with those seventeen
- 22 drivers as the whole group?
- 23 A Yeah. I met, like I say, between three and four, when I
- 24 was passing out the written warnings.
- 25 Q Maybe I am not phrasing the question clearly.

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- 1 The whole group, did you ever meet with the whole group at
- 2 one time?
- 3 A No.
- 4 Q Okay. So, the rest of the drivers that were not taking
- 5 part in this break, they were out picking up customers, as far
- 6 as you knew, right?
- 7 A Making big money, yes.
- 8 Q In fact, over \$100,000 that day.
- 9 And they didn't -- well, they were making good money, so
- 10 they weren't complaining were they?
- 11 A No, they weren't complaining. They just say they were
- 12 making big money.
- 13 Q So there were no reports of the drivers taking the long
- 14 break, going and interfering with those drivers, then, was
- 15 there?
- 16 A No, they were interfering with the service. A \$100,000 in
- 17 our company when we had a convention going on a week is
- 18 nothing. We should have made \$150,000, maybe \$200,000.
- 19 Q But -- I understand that, but you would have made more if
- 20 these drivers --
- 21 A Of course!
- 22 O -- but they weren't interfering with the other drivers
- 23 that were working; is that right?
- 24 A Some of them were.
- 25 Q How is that?

- 1 A I got reports from some of the 12:00 to 12:00 drivers
- 2 saying that there was drivers from Yellow-Checker-Star, and
- 3 some drivers from -- they believe they was -- they believe
- 4 there was a couple drivers from Nellis Cab, checking the
- 5 numbers of cab picking up on the Strip and writing them down,
- 6 because they was serving the public. This is what drivers told
- 7 me.
- 8 Q So writing them down but not going and blocking them off
- 9 or anything like that, right?
- 10 A I didn't -- I didn't hear anything about it being blocked,
- 11 no.
- 12 Q Did you discipline anybody for that?
- 13 A I don't know who they are.
- 14 Q So what did you do to find out? If they reported somebody
- 15 from Nellis, what did you do to find out?
- 16 A No, they say that they believe that there was somebody --
- 17 Nellis drivers in private cars, I guess it was on their days
- 18 off, driving around taking numbers of -- not only on Nellis but
- 19 anybody that was picking up. I guess they know them by face.
- 20 I don't know.
- 21 O So, what did you find out that led them to believe that
- 22 they were Nellis drivers?
- 23 A They told me they were Nellis drivers. My Nellis drivers
- 24 that were working that day, they told me that there was some
- 25 Nellis drivers, some Checker drivers, driving their own private

- 1 cars, driving around, picking up -- writing numbers of all of
- 2 the cabs from all of the companies, not just Nellis, that they
- 3 were picking up at the time of the slowdown.
- 4 Q Just writing stuff down.
- 5 A Yeah.
- 6 Q And what did you do with that information?
- 7 A I don't have that information. They did -- they had it.
- 8 Q Did you do any follow-up to find out --
- 9 A I don't know who they were.
- 10 Q So you don't know who it was that reported that, or you
- 11 don't know who it was that was writing the information down?
- 12 A I know who reported it to me. It was a couple of 12:00 to
- 13 12:00 drivers, but they couldn't tell me who they were.
- 14 They just say, "Jaime, you know there are a couple guys
- 15 out there taking numbers?"
- "Who are they?"
- 17 "I don't know. I think some of them are Nellis Cab, but
- 18 some guys, I don't even know who they are."
- 19 Q Anything else?
- 20 A Besides that? The TA called us. I was told that the TA
- 21 called Dispatch at that time, because this was -- because this
- 22 was premeditated action of pre-planned conspiracy, if you want
- 23 to call it like the TA did. It was done from 7:00 p.m. to 9:00
- 24 p.m. They found that out. They called and they also let us
- 25 know that this was going on, and they talked to the dispatcher,

- 1 letting them know that these guys are all in one place, and
- 2 they were supposed to go there and send the guys to work, but I
- 3 don't --
- 4 Q Who --
- 5 A -- if they did or not.
- 6 Q Who from the TA called?
- 7 A One of the investigators. I can't remember the name --
- 8 called the dispatcher.
- 9 O But --
- 10 A Because they were getting calls about service.
- 11 Q So, I had asked you questions earlier about what happens
- 12 when a shift of cabs departs, and there is no cab drivers left
- 13 at Nellis, so at the time that this break happened, there were
- 14 no cab drivers back at Nellis; correct?
- 15 A At 7:00 p.m., no.
- 16 Q So even if the drivers had brought their cabs back and
- 17 said, "We are on break," there was nobody to drive the cabs
- 18 away, was there?
- 19 A No, but I could have called a lot of people.
- 20 Q But at that time --
- 21 A I could have called a lot of people.
- 22 Q Okay, but you couldn't have called anybody that worked
- 23 earlier in the day, right?
- 24 A I didn't know that this was going to happen.
- 25 Q But the question is, the drivers that worked earlier in

- 1 the day, you couldn't call them because of the number of hours
- 2 that they could work; is that right?
- 3 A I am not talking about day drivers. I have a lot of
- 4 extras on nights.
- 5 Q But I am asking you about the day drivers.
- 6 A I would never call a day driver to work a night shift, no.
- 7 Q So you couldn't call the day drivers, and the drivers that
- 8 were working later that night, you couldn't call them without
- 9 pulling them off of their shift, right?
- 10 A [No audible response]
- 11 Q So if they had taken their hour break, and then came back
- 12 and parked the cabs and said, "We are on strike."
- 13 A Right.
- 14 Q You still wouldn't have been able to put the cabs out
- 15 right away, would you?
- 16 A Not all of them right away, but we would have made the
- 17 best of it and probably more than half. The cabs that were
- 18 parked there, I could quarantee you, I could get people to
- 19 work. People wanted to work that night because it was a busy
- 20 night.
- 21 It was a Saturday night. It was a convention night. The
- 22 town is 92 percent full.
- 23 Q So if you heard about this days or a week before, why
- 24 didn't you have anybody on stand-by, just in case?
- 25 A Because I never thought that they were going to do this.

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- 1 This was something -- this was unique.
- 2 [Long pause]
- 3 MR. SMITH: Could I have a moment off the record, Your
- 4 Honor?
- 5 JUDGE POLLACK: Off the record, please.
- 6 [Off the record]
- JUDGE POLLACK: Back on the record, please.
- 8 Q BY MR. SMITH: So, Mr. Pino, for the seventeen drivers, do
- 9 you know, was this the first time that each one of them had
- 10 taken a break longer than an hour?
- 11 A To my knowledge, yes.
- 12 Q Because -- is that because you weren't aware of any time
- 13 when they had taken longer than an hour?
- 14 A I don't remember ever them taking two and three-hour
- 15 lunch.
- 16 Q Now, was every single driver's trip sheet and GPS log
- 17 checked that day?
- 18 A Only the ones that were reported on that location, and
- 19 some others that were not responding to the radio, which is one
- 20 of them that went to Taco Bell, because he was intimidated to
- 21 be on the street.
- 22 Q Let me ask you to look at the discipline sheet for Senait
- 23 Terefe -- I believe it is Terefe.
- 24 A Senait Terefe.
- 25 Q I am going to be looking at the --

- JUDGE POLLACK: What number?
- 2 MR. SMITH: That is General Counsel's Exhibit No. 22.
- JUDGE POLLACK: Thank you.
- 4 Q BY MR. SMITH: Now, looking at (d), (e), and (f), I don't
- 5 see the Twain address; is that right?
- 6 A That is correct.
- 7 Q Do you know why was Senait, do you know why Senait was
- 8 flagged?
- 9 A I am trying to remember what she said. She did not pick
- 10 up anybody from 6:57 until 10:02 p.m., which is pretty much --
- 11 almost -- a little bit over three hours, and I think she said
- 12 that she went home. That is what she said.
- 13 Q Why -- why was she asked?
- 14 A Why did she went home?
- 15 Q No, why was she asked -- why was she flagged to take a
- 16 look at?
- 17 A Because she was one of the ones that we were calling. We
- 18 couldn't get a hold of her, and when the guys were looking at
- 19 the GPS, my Dispatcher, they realized that this girl has been
- 20 at that address -- at the same address without moving from 6:57
- 21 until 10:02 p.m. That is why she was flagged.
- 22 Q Okay. Now, the drivers that -- that took the long break,
- 23 and I don't believe I asked you this earlier. We talked about
- 24 long-hauling. They could have boosted their productivity for
- 25 the rest of the shift by long-hauling, couldn't they?

- 1 A I -- I don't understand the question.
- 2 Q Well, to make up -- so, to try to make up for having low
- 3 productivity because of the long break, one of the ways they
- 4 could increase their productivity would be by long-hauling; is
- 5 that right?
- 6 A Well, if you put it that way, yeah, it could be possible,
- 7 but we don't encourage anybody to long-haul, so I -- I don't
- 8 know if that is the only way.
- 9 There is another way to do it, so you are more aware of it
- 10 -- this issue -- this long-haul issue really gets me, and I
- 11 apologize.
- 12 There are drivers sometimes, that they put their money in
- 13 the meter. That is another way to increase their productivity,
- 14 so --
- 15 O And that is --
- 16 A -- what do you call that?
- 17 Q Now, when you said they put their money, their own
- 18 personal money?
- 19 A Yeah. It is a well-known fact that probably the cab
- 20 drivers failed to tell you, since you interviewed a lot of
- 21 them, but that is another way to increase your productivity.
- 22 Why they do it, I don't know. Should they do it? No.
- 23 They shouldn't do that.
- 24 Q How would you catch that?
- 25 A The only way to catch that is to see a driver driving

- 1 around, cheater lights are off, and the meter is engaged.
- 2 Q Did you say "cheater?"
- 3 A Cheater lights. The little -- the cabs have two yellow
- 4 lights on top, and one in the back window. When you push the
- 5 button on the meter, those cheater lights go off. They turn
- 6 off, meaning this taxi is hired.
- 7 If you see taxis with yellow lights, you know, one in the
- 8 back and two on the top, that they are on, then this taxi is
- 9 for hire.
- 10 So, if you see a driver without any passengers and the
- 11 cheater lights are off, his meter is on.
- 12 Q Do they ever start the meter before they, like on a radio
- 13 call -- you use radios, right?
- 14 A Uh-huh.
- 15 Q Do they turn the meter on when they receive the radio
- 16 call?
- 17 A No, they are not allowed to do that. The NAC and NRS has
- 18 said, that is charting your own self. You can't do that under
- 19 the law.
- 20 Q So the only way you can tell is by looking at the lights
- 21 and looking at whether there are passengers in there?
- 22 A That is the only way that they can increase, to answer
- 23 your question, the productivity, besides this so-called long-
- 24 hauling issue.
- 25 Q I want to ask you a question about stealing rides.

- 1 Now, normally when cab drivers, for a lot of the big
- 2 places, airports, the casinos, and places like that, you have a
- 3 taxi stand where the drivers have to wait in line to go up
- 4 where they pick up customers; is that right?
- 5 A Yes.
- 6 Q And how long can that take?
- 7 A It depends. If a show breaks or that particular casino is
- 8 going to break in fifty minutes, and you are number ten, it is
- 9 going to take you fifty minutes.
- 10 Q But the length of time that you can be in there varies,
- 11 right?
- 12 A Oh, yeah.
- 13 Q Do you know how long it has been -- what is the longest
- 14 that you are aware of that it takes?
- 15 A We try to help our drivers in productivity, and to my
- 16 knowledge, the little bit of knowledge that I have, when I
- 17 drove the cab myself, and it has been a long, long time, and it
- 18 is a different world out there, but I never gave myself more
- 19 than 25 minutes in any stand, to wait for the ride.
- 20 Q Okay, I understand that is your experience, but what has
- 21 been reported to you as far as the length of time it waits --
- 22 it takes to wait in a taxi stand now? The longest?
- 23 A If you go to the airport when there is no airplanes, that
- 24 is the longest one that has ever been reported to me, 45 to an
- 25 hour.

- 1 Q Now, stealing rides, doesn't that mean when a taxi driver
- 2 will blow past the taxi stand and pick up customers anyway; is
- 3 that right?
- 4 A That is correct.
- 5 Q And that happens, doesn't it?
- 6 A Yeah.
- 7 Q And I am assuming that when they do that, that is another
- 8 way that they would boost their productivity, rather than
- 9 waiting in line?
- 10 A And a chance to get a ticket, too.
- 11 Q And that would be by the TA?
- 12 A Right.
- 13 Q And then I mentioned the radio calls; if the driver is
- 14 paying attention and a radio call comes out that is in an area
- 15 they can pick up, they can also boost their productivity that
- 16 way; is that right?
- 17 A They can.
- 18 Q All right. Now, after the long break, Nellis amended
- 19 their handbook to reflect what had happened in the long break;
- 20 didn't they?
- 21 A Yes.
- 22 [Long pause]
- 23 Q BY MR. SMITH: Now, is the -- looking at General Counsel's
- 24 Exhibit No. 28(a), is that the amendment to the Handbook?
- 25 A Yes.

- 1 (General Counsel's Exhibit No. 28(a) through 28(o), marked for
- 2 identification.)
- 3 Q BY MR. SMITH: And this was done as a reaction to the long
- 4 break?
- 5 A Yes.
- 6 Q And then, General Counsel's Exhibit No. 28(b) through --
- 7 oh, are these representative of the types of sheets that the
- 8 drivers had to sign?
- 9 A That is correct.
- 10 Q Now, looking through these, the earliest date that anyone
- 11 signed these, I believe, is on General Counsel's Exhibit No.
- 12 28(d), and that is February 26th.
- 13 If you could just verify that, that that is the earliest
- 14 date?
- 15 A Twenty-what?
- 16 Q February 26th?
- 17 A No, I mean the number.
- 18 Q I'm sorry, General Counsel's Exhibit No. 28(d). The
- 19 documents will speak for themselves.
- 20 A 2-26, yes.
- 21 Q Okay, do you know why Abiy Amede was the first person of
- 22 the seventeen that signed this?
- 23 A I -- shift -- his shift probably was -- this was done when
- 24 he was working, so Monday -- all of the drivers work all kinds
- 25 of different shifts, so I don't know. I am just guessing.

- 1 Q Okay.
- 2 MR. SMITH: Your Honor, I would like to offer in General
- 3 Counsel's Exhibit No. 28(a) through 28(o).
- 4 MR. WINKLER: No objection.
- 5 JUDGE POLLACK: General Counsel's Exhibit No. 28(a)
- 6 through 28(o) are received.
- 7 (General Counsel's Exhibit No. 28(a) through 28(o), received
- 8 into evidence.)
- 9 MR. SMITH: Thank you, Your Honor.
- 10 Q BY MR. SMITH: Now, within a few weeks after the long
- 11 break, Nellis received a letter from a union that an organizing
- 12 drive was under way for Nellis drivers; is that right?
- 13 A I recall that, yes.
- MR. SMITH: I am handing out what is marked as General
- 15 Counsel's Exhibit No. 29.
- 16 (General Counsel's Exhibit No. 29(a) and 29(b), marked for
- 17 identification.)
- 18 Q BY MR. SMITH: And this is the letter that Nellis
- 19 received, isn't it?
- 20 A Yes.
- 21 Q And do you remember when Nellis received this?
- 22 A I don't have an exact date, but it was way after when the
- 23 letter was issued, so --
- 24 Q Oh, I'm sorry.
- 25 A Right here, right here.

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- 1 Q That has the date on it, but I cannot make out on (a) --
- 2 it appears there is a date on (b) of March 2nd.
- 3 Do you remember who received this letter?
- 4 A No. It was certified mail. We have either one of our
- 5 supervisors sign. I don't -- I couldn't tell you who received
- 6 it.
- 7 Q And that also -- is there only one Abiy Amede that works
- 8 for Nellis, or worked for Nellis?
- 9 A I am going to assume, yes, because I -- I really don't --
- 10 there might be somebody else there with the same name, but a
- 11 different last name. Sometime -- I don't know, so I don't want
- 12 to say "yes," but --
- 13 Q Is it fair to say that there are none that you are aware
- 14 of?
- 15 A Right.
- 16 Q Okay.
- 17 MR. SMITH: Your Honor, I would like to offer in General
- 18 Counsel's Exhibit No. 29(a) and (b).
- 19 MR. WINKLER: No objection.
- 20 JUDGE POLLACK: General Counsel's Exhibit No. 28(a) and
- 21 (b) are received.
- 22 (General Counsel's Exhibit No. 29(a) and 29(b), received into
- 23 evidence.)
- MR. SMITH: Thank you, Your Honor.
- 25 [Long pause]

- 1 Q BY MR. SMITH: Now, Abiy Amede, you were involved in his
- 2 termination, weren't you?
- 3 A Yeah, we -- we reviewed him and he was terminated for
- 4 accidents.
- 5 MR. SMITH: Your Honor, if I can have a moment off the
- 6 record?
- JUDGE POLLACK: Off the record, please.
- 8 [Off the record]
- 9 JUDGE POLLACK: Back on the record, please.
- 10 Q BY MR. SMITH: Looking at General Counsel's Exhibit No.
- 11 31(a), is this a document that Nellis normally uses in the
- 12 operation of its business?
- 13 A Yes.
- 14 (General Counsel's Exhibit No. 31(a) through 31(o), marked for
- 15 identification.)
- 16 O BY MR. SMITH: And what is this used for?
- 17 A You are talking about 31(a)?
- 18 Q Yes.
- 19 A This is -- when we terminate somebody, it is filled out by
- 20 the supervisor, and it is being taken off -- let know to be
- 21 taken off the cab that he was assigned. You know anything that
- 22 has to do with -- with his shift, and then it is turned in to
- 23 the girls upstairs, which they do their own thing about
- 24 whatever they do with the drivers.
- 25 Q Does this -- where it says, "The reasons," is that all of

- 1 the reasons that were found to justify the termination?
- 2 A No, that is the final. We just put the final there.
- 3 Q Now, when there is a termination, is a letter given out to
- 4 the employee?
- 5 A No.
- 6 Q Is there anything other than this document that is
- 7 normally used to document the termination?
- 8 A No, we usually do it verbally. We don't give any type of
- 9 document.
- 10 Q Okay, so -- and I believe you said you were involved in
- 11 his termination.
- 12 Can you tell me about the accident that he had?
- 13 A Well, from what I can read here, because I cannot remember
- 14 the hundreds and hundreds of accidents. I would have to read
- 15 it.
- 16 This was a minor accident. It was a side-swiped, and he
- 17 was at fault.
- 18 Q You said -- before I move on, you said "hundreds and
- 19 hundreds of accidents."
- 20 A Through the years, yes.
- 21 Q Okay, do you know about how many accidents Nellis normally
- 22 has?
- 23 A This year we are doing really good, so I don't know.
- 24 Q Is it normally hundreds a year?
- 25 A Oh, more than that.

- 1 Q All right, and Nellis also has its own garage on-site; is
- 2 that right?
- 3 A Yes.
- 4 Q And if it is a repair that the garage can complete --
- 5 A If it is a minor repair. We don't have a license to do
- 6 major repairs at Nellis Cab, as far as body shop. If it is
- 7 something really minor, yes, we can repair it.
- 8 Q Okay. So, looking at this, and I am looking at -- let me
- 9 make sure I understand this, General Counsel's Exhibit No.
- 10 31(b), we have there -- a lot of times there is a note that
- 11 comes -- that is put in an accident record; is that right?
- 12 A Yes, sometimes, yes.
- 13 Q And you keep a separate accident record, separate from the
- 14 personnel files; is that right?
- 15 A That's correct.
- 16 Q And I believe they are the green folders?
- 17 A Yes.
- 18 Q So, within there, there will be the Supervisor Accident
- 19 Report, which I believe is 31(c); is that right?
- 20 A Yes.
- 21 O And then sometimes there will be a summary on -- that is
- 22 shown in (b), that note that is posted there?
- 23 A The summary is right on the bottom of (c).
- 24 Q Okay, I'm sorry, for the notes. I guess -- what is the
- 25 purpose of the note --

- 1 A Oh, we do that when we terminate a driver, so we -- you
- 2 know, sometime we might terminate two or three drivers over the
- 3 weekend, and we might have other accidents, so that is the
- 4 purpose of the note. Just a reminder --
- 5 Q So this says that it was at fault. Who determines that?
- 6 A At the time of the -- at the time of the accident, our
- 7 supervisor talks to the police officer or whoever went there.
- 8 I guess -- no, D. B. Ford -- he talks to the D. B. Ford
- 9 Adjuster and he decided that he was at fault. Because this
- 10 side collision is very hard for me to see in the camera,
- 11 sometimes, and the cameras that we have in the cab, so he
- 12 determines that.
- 13 Q So it is the D. B. Ford Adjuster that determines who is at
- 14 fault?
- 15 A Well, the D. B. Ford Adjuster goes to the scene, and also
- 16 our supervisor, and whatever the driver tells them.
- 17 Q Now, does the supervisor take pictures of the accident?
- 18 A Yes.
- 19 Q And the Adjuster also takes pictures of the accident?
- 20 A Yes.
- 21 Q Now, with this, this is from the -- well, where are those
- 22 pictures? Where are those stored?
- 23 A Well, D. B. Ford has got them.
- 24 Q And do they provide them to you?
- 25 A Do they provide them to me?

- 1 Q Do they provide a copy of the pictures to --
- 2 A Not most of the time, because they handle our claims,
- 3 unless I want them to.
- 4 Q And when they say that they are sending copies of the
- 5 pictures, "The pictures are attached," there are actually
- 6 pictures there, right?
- 7 A If they are sending pictures?
- 8 Q Yes.
- 9 A Well, if they are sending pictures, they are sending
- 10 pictures, yes.
- 11 Q Okay. So, I want to -- so the information on (c) is a
- 12 summary of the -- the Nellis Cab plus then also the other
- 13 vehicle; is that right, where it says "Virgin Valley 7321?" I
- 14 am looking at (c).
- 15 A Correct.
- 16 Q So, and the Virgin Valley Cab, you have got Nellis Cab and
- 17 then the other cab is just called the "adverse cab?"
- 18 A "Adverse," yes.
- 19 Q And that is not just for cabs either, right?
- 20 A For everybody.
- 21 Q Any vehicle that is not Nellis?
- 22 A Right.
- 23 Q Is the adverse?
- 24 A The adverse.
- 25 Q And the signature on the bottom of (c), do you recognize

- 1 who that is?
- 2 A Yeah, that is one of my Road Supervisors, August Neogrete
- 3 [phonetic].
- 4 Q And then I am looking at (d). This says, "State of
- 5 Nevada, Department of Business and Industry, Taxicab
- 6 Authority."
- 7 Is this something that is filled out by the TA?
- 8 A Yes.
- 9 Q So, how -- how does this work? When you have got an
- 10 accident, I know you said the supervisor comes out, the
- 11 insurance adjuster comes out; does the TA come out also?
- 12 A Yes.
- 13 Q And --
- 14 A We need to call them every time there is an accident.
- 15 O And who calls them?
- 16 A The dispatcher.
- 17 Q So the driver -- how does the dispatcher find out?
- 18 A Well, if the driver has an accident, he is supposed to
- 19 call it in right away to the dispatcher. The dispatcher finds
- 20 that out, where the accident was, and then the dispatcher calls
- 21 our Road Supervisor, our Road Supervisor calls D. B. Ford.
- 22 While he is doing that, either my Road Supervisor or my
- 23 dispatcher will call TA. That is how it works.
- Q Okay, and then what happens after that?
- 25 A They arrive to the scene.

- 1 Q Now, the TA, when they show up, one of the things they are
- 2 looking for is whether or not the vehicle can remain in service
- 3 or not.
- 4 A That is correct. That is the only thing they look.
- 5 Q I'm sorry, I didn't hear you.
- 6 A That is the only thing they look, whether the vehicle is
- 7 okay to keep operating.
- 8 Q So they don't determine fault for the accident?
- 9 A No.
- 10 Q Okay, and they don't issue citations for the accident, do
- 11 they?
- 12 A Umm --
- 13 Q And maybe if I move onto a different question, wouldn't a
- 14 citation be issued by Metro, if there was one?
- 15 A I haven't seen a citation by TA on an accident in a long
- 16 time.
- 17 You are asking me a question that I can't answer because I
- 18 don't know if they are allowed, or there is some sort of an
- 19 agreement between the Taxicab Authority and the peace officer
- 20 or the Highway Patrol or the Metro.
- 21 Q Okay, then I will narrow it down to your experience. So
- 22 you haven't experienced in a long time the TA issuing a traffic
- 23 citation; is that right?
- 24 A Accident.
- 25 Q Or an accident citation?

- 1 A Not traffic. They do issue traffic citations.
- 2 Q Okay, thank you.
- 3 So on this, and I am still looking at (d), there is a
- 4 comment that is checked. "No visible new damage."
- 5 Do you see that?
- 6 A On (d)?
- 7 Q On (d). So looking about half-way down the form on the
- 8 right-hand side, "No visible new damage."
- 9 A Yeah, I see that.
- 10 Q Okay.
- 11 A That is the TA.
- 12 Q Okay. Now, when they are talking about the damage, they
- 13 are talking about the vehicle is damaged; is that right?
- 14 A Correct.
- 15 Q So it is not talking about property like running into a
- 16 building or something like that?
- 17 A No.
- 18 Q Okay. And then the Company representative, is that
- 19 August, also?
- 20 A August, I think it is, yes. Yeah, that is August.
- 21 Q And this looks like this is the TA inspection report for
- 22 that accident, correct?
- 23 A Yes.
- 24 Q Now, looking at (e), we have got an invoice for D. B.
- 25 Ford. These -- is this the only insurance adjuster that Nellis

- 1 uses?
- 2 A Yes.
- 3 Q So when you get an invoice like this, they have got a
- 4 standard fee for whenever they look at an accident, right?
- 5 A Yes.
- 6 Q So what they are -- what we are looking at in (e), is
- 7 their fee just for the service in evaluating the accident; is
- 8 that right?
- 9 A Yes.
- 10 Q And when I say "evaluating," they are responding --
- 11 A This is the initial evaluation, yes.
- 12 Q And then they provide a report, and I am looking at (f)
- 13 now. They provide a report based on their investigation of
- 14 what they find?
- 15 A Yes.
- 16 Q Okay. Now -- now, in this, there were no citations or
- 17 traffic tickets or anything like that issued to Mr. Amede, was
- 18 there?
- 19 A No, it doesn't say there was any, no.
- 20 Q And nothing outside of this document that you are aware
- 21 of?
- 22 A No.
- 23 Q Now, attached to (f), I believe, was (q). Was this also a
- 24 form that D. B. Ford would provide to Nellis?
- 25 A Yes.

- 1 Q Okay. Now, I am looking at April 23rd, 2012, and it is
- 2 the third line -- the third entry down. You have got April
- 3 20th, and then two April 23rd's, and I am looking at the second
- 4 April 23rd.
- 5 A Uh-huh.
- 6 Q Under "Activity Description," it says, "Kathy s/w." Is
- 7 that "spoke with?"
- 8 A I couldn't tell you.
- 9 Q Okay. "Greg Myse," and then there is "C/V." Do you know
- 10 what that is?
- 11 A Nope.
- 12 Q "Passenger Address," and then it gives some information on
- 13 the passenger, an e-mail address, date of birth, and says,
- 14 "Greg gave me the phone number of the female passenger," but
- 15 then in parentheses it said, "Greg said the driver of the cab
- 16 he was riding in, cut off the Nellis Cab twice causing the
- 17 accident."
- 18 A Uh-huh.
- 19 Q "Sent passenger statement to his e-mail."
- 20 A Uh-huh.
- 21 Q So, by that account, it was the other cab driver that cut
- 22 off Abiy Amede; is that right?
- 23 A If that is what they found that out, yes.
- 24 Q So, isn't there a provision in the employee handbook that
- 25 allows that if an employee is terminated, and it is found that,

- 1 you know, that the termination was wrong, that they would be
- 2 offered their job back?
- 3 A Well --
- 4 Q And let me try to be a little bit more specific --
- 5 A Okay.
- 6 Q -- because I think -- I think the situation where it has
- 7 arisen is say, an arrest. If they are arrested on the job and
- 8 then it is found out later that it was for, you know, something
- 9 they shouldn't have been arrested for, that they would get
- 10 their job -- that their job would be offered back to them; is
- 11 that right?
- 12 A I think it says so there, yes.
- 13 Q All right. And there is something in the handbook that
- 14 says that, that you believe --
- 15 A Well, I remember that says if you are arrested, you are
- 16 duly terminated. That is all I know.
- 17 MR. WINKLER: I will stipulate that the handbook on arrest
- 18 says, if it turns out to be not true, that they will get their
- 19 job back, and that is specific for arrest, in the Employee
- 20 Handbook.
- 21 MR. SMITH: I agree with that.
- JUDGE POLLACK: Thank you.
- 23 Q BY MR. SMITH: Now, is there a policy at Nellis that is
- 24 similar to that, if they are discharged for something that
- 25 turns out later not to be true, that they are offered their job

- 1 back?
- 2 A Not to be true?
- 3 Q So if the reason that Nellis fired them --
- 4 A Uh-huh.
- 5 Q -- you find out later that was not a valid reason, do you
- 6 offer their job back?
- 7 A We don't have anything in our book.
- 8 Q And I am not talking about just the book.
- 9 A Oh.
- 10 Q I am talking about Nellis policies.
- 11 You fire somebody for whatever reason, at fault accident,
- 12 and then you later find out that they were not at fault, do you
- 13 offer their job back?
- 14 A No, not really. If you get fired for an at-fault
- 15 accident, it is just not -- not just because of that, how easy
- 16 you put it, there are a lot of other things that we would look
- 17 into it.
- 18 Mr. Amede was fired for frequency, whether he was at fault
- 19 or not at fault was irrelevant to us. So, when you asked me
- 20 that question, do we have a policy, there are so many
- 21 variances, as I explained to you before -- no, we don't have
- 22 nothing in the book because there is nothing you can put in the
- 23 book actually.
- 24 Q And --
- 25 A There are so many different things.

- 1 Q And there are no policies outside of the book that would
- 2 allow that?
- 3 A There are so many different variances. I don't know -- I
- 4 mean --
- 5 Q Now, when you said there are so many variances, the kind
- 6 of things that you look at, and I will go through these, is the
- 7 number of accidents the driver has been in? The severity of
- 8 accidents?
- 9 A [No audible response.]
- 10 Q And -- I'm sorry, I need an audible answer for the Court
- 11 Reporter.
- 12 A Yes.
- 13 Q Okay, and for -- and that is for number and severity; is
- 14 that right?
- 15 A Frequency.
- 16 Q Frequency?
- 17 A Severity, fault, not at fault, productivity. There are a
- 18 lot of different things that we look at.
- 19 Q Okay. And looking at (h), is this just the driver's
- 20 statement of what happened?
- 21 A It --
- 22 Q Or, I'm sorry, is this -- is this the driver's observation
- 23 or is this the --
- 24 A I don't see (h).
- 25 Q (h) is the one that was signed by August -- August

- 1 Neogrete?
- We are looking at General Counsel's Exhibit No. 31(h),
- 3 right?
- 4 A Okay.
- 5 Q Okay.
- 6 A Okay, go ahead.
- 7 Q I'm sorry, when it says, "My observation or involvement in
- 8 this matter," who -- whose statement is this? Is this the
- 9 employee or is that the supervisor?
- 10 A This is the employee.
- 11 Q And then I want to look at General Counsel's Exhibit No.
- 12 31(i).
- This is also Mr. Amede. Was this -- was (i)
- 14 representative of the last accident that he had had before the
- 15 April 20th accident, when he was fired?
- 16 A Was this the prior accident, you are asking?
- 17 Q Yes.
- 18 A I -- I assume. I mean, if that is the way my assistant
- 19 put it in order, yeah, it could be.
- 20 Q So, when you looked at this, did you know of any other
- 21 accidents that he had had in the prior year?
- 22 A Oh, yeah.
- 23 Q And --
- 24 A We looked at all of his activity, but I don't know if this
- 25 is the prior one to this one. I couldn't tell you for sure,

- 1 no.
- 2 Q Okay, but this looks like the type of form that you would
- 3 have in there about an accident, right?
- 4 A Right.
- 5 Q And this one was a not-at-fault accident?
- 6 A That's correct, it is a no-fault.
- 7 Q Now, on this one, there is a -- if I look at 31(j), there
- 8 is also a Witness Courtesy Card.
- 9 A Yes.
- 10 Q What is that used for?
- 11 A Usually we have those cards in our cabs in case the
- 12 passenger wants to make a statement about what he witnessed at
- 13 the time of the accident.
- 14 Q And do you remember this accident, I believe it was a lady
- 15 ran out and actually ran into Abiy Amede's cab? Do you
- 16 remember --
- 17 A I don't remember the accident, but if I read it, that is
- 18 what it says, so that is probably what happened.
- 19 Q Okay. And now, when we are looking at 31(m), is this the
- 20 typical type of document that you get that lists what the costs
- 21 are going to be as a result of an accident?
- 22 A Yes.
- 23 Q Where -- if any, where would it show what the costs were
- 24 for that accident?
- 25 A It doesn't show in this one. This shows whether we are at

- 1 fault or not at fault, and whether we have outstanding
- 2 liabilities.
- 3 Q All right. Now, in this one, there are pictures attached
- 4 on 31(o), and I believe in the letter it says, on 31(n), that,
- 5 "We have attached photographs taken at the scene of the
- 6 accidents."
- 7 Is it normal for them to send pictures like this with
- 8 their report?
- 9 A Yes and no. Sometimes they do it and sometimes they
- 10 don't.
- 11 They handle our accidents, so, you know, we don't handle
- 12 our accidents with the insurance companies or stuff like that
- 13 on this, but we don't -- but sometimes they do send the
- 14 pictures and sometimes they don't.
- 15 MR. SMITH: Can I have a moment off the record, Your
- 16 Honor?
- 17 JUDGE POLLACK: Off the record, please.
- 18 [Off the record]
- 19 JUDGE POLLACK: Back on the record.
- 20 MR. SMITH: Thank you, Your Honor.
- 21 Q BY MR. SMITH: We were looking at General Counsel's
- 22 Exhibit No. 31. This was the discipline for Mr. Abiy Amede.
- 23 A Okay.
- 24 Q Was -- Mr. Abiy Amede had never been suspended for
- 25 accidents prior to his termination, had he?

- 1 A I don't recall.
- 2 Q None that you remember?
- 3 A I don't recall.
- 4 Q Do you remember him ever being disciplined in any way for
- 5 accidents before this?
- 6 A No, I really don't recall.
- 7 MR. SMITH: And, Your Honor, I don't believe I have moved
- 8 for the introduction of General Counsel's Exhibit No. 31(a)
- 9 through 31(o), yet.
- 10 JUDGE POLLACK: Any objection?
- 11 MR. WINKLER: No objection.
- 12 JUDGE POLLACK: Thank you.
- General Counsel's Exhibit No. 31(a) through 31(o) are
- 14 received.
- 15 (General Counsel's Exhibit No. 31(a) through 31(o), received
- 16 into evidence.)
- 17 MR. SMITH: Thank you, Your Honor.
- 18 Q BY MR. SMITH: Now, Mr. Amede filed for unemployment,
- 19 didn't he?
- 20 A Yes.
- 21 Q All right, and he won unemployment against Nellis, didn't
- 22 he?
- 23 A The unemployment was not that he won. The unemployment
- 24 was awarded to him because -- I just want to rephrase that.
- 25 Anybody that gets involved in an accident, it is not a

- 1 form of misconduct. They get automatically unemployment.
- 2 Q And so the benefits, the unemployment benefits were
- 3 awarded to him based on that?
- 4 A Yes.
- 5 Q Now, the Employee Handbook had just been modified to allow
- 6 -- in December of 2011, to allow drivers to take a class if
- 7 they were involved in frequent accidents; is that right?
- 8 A That is correct.
- 9 MR. SMITH: I am going to hand out what has been marked as
- 10 General Counsel's Exhibit No. 30(a) through 30(k).
- 11 (General Counsel's Exhibit No. 30(a) through 30(k), marked for
- 12 identification.)
- 13 Q BY MR. SMITH: And each one of the sheets is the same. It
- 14 is just a different driver.
- Do you recognize this as being the change in the Employee
- 16 Handbook for the frequent accidents?
- 17 A Change in the Employee book; I don't understand your
- 18 question.
- 19 Q Did this amend the Employee Handbook?
- 20 A Yeah, this -- eventually, yes. It is going to go into the
- 21 Employee -- when we print again.
- 22 O But -- and understanding it is not in the printed Handbook
- 23 yet, did this go into effect right away?
- 24 A When we gave it to them? Yes.
- 25 Q Okay. So even though it is not in the printed handbook,

- 1 it is effective as of the --
- 2 A Yes.
- 3 Q -- day they signed it?
- 4 A Yes.
- 5 Q Now, is this also referred to as the Smith training?
- 6 A Yes, the Smith Training -- the Smith System Training
- 7 Course -- Safety Training.
- 8 Q And what is that?
- 9 A Our insurance carrier suggested to us that we need to use
- 10 it in order to try to help in frequencies and all kinds of type
- 11 of accidents, and it has been very effective all around the
- 12 United States in the transportation business, so.
- 13 It is an hour class that the drivers take, where they have
- 14 to answer a questionnaire after watching the video, and it
- 15 makes them aware of all of the things that they should be doing
- 16 and how they should be doing when they are driving, and what
- 17 they shouldn't be doing.
- 18 So, so far, this has helped us a lot in decreasing
- 19 accidents.
- 20 Q Now, the drivers pay for this out of their own pocket; is
- 21 that right?
- 22 A That is correct.
- 23 Q And this is considered -- Nellis considers this to be a
- 24 punitive step against the drivers since they have to pay for
- 25 this out-of-pocket; is that right?

- 1 A Well, this was requested by our insurance company for us
- 2 to do. So, it is not a punitive -- the drivers can get it --
- 3 that take this class, they either have high frequency, they
- 4 either are at fault, or it was -- it was told to us by the
- 5 insurance company, "In order for you guys to keep our business,
- 6 you will have to do this."
- 7 Q Okay. I am looking at -- I am looking at 30(a), and I am
- 8 looking at the one, two, three, four, fifth -- the fifth line
- 9 down. It says a punitive safety training course at the expense
- 10 of a driver.
- I guess, my question is, what does that mean? The
- 12 punitive?
- 13 A Well, the way I interpret your question is like we are
- 14 punishing the driver. We were requested by the insurance to do
- 15 it. That is how I understand it.
- 16 Q And is that how you understand it that it is a punishment
- 17 for the driver?
- 18 A I guess -- no, I understand it a little bit differently.
- 19 I think this is -- even though they paid for it, it is
- 20 something for them to conserve their employment and to train
- 21 them to be better drivers, so. I don't know why they put
- 22 punitive there. I mean, this is the insurance company.
- 23 Q So, is there a consequence if they are told to take the
- 24 Smith course and they don't?
- 25 A Oh, yeah.

- 1 Q And what is that consequence?
- 2 A That -- they have to reschedule for the second time. If
- 3 they can't do it a second time, then they get terminated.
- 4 Q Now, Mr. Amede, he didn't take the Smith Training Course,
- 5 did he?
- 6 A I am not aware if he did, no.
- 7 Q And the -- we had looked at the earlier accident where the
- 8 lady ran into his -- the pedestrian ran into his car. That was
- 9 a -- I believe it was a "not-at-fault."
- 10 Is that the kind of accident -- would it still trigger a
- 11 Smith Training Course?
- 12 A If you are referring to the pedestrian one --
- 13 Q Yes, sir.
- 14 A Not really. This person -- this person left running --
- 15 no, I won't -- I won't consider this to take the Smith class.
- 16 I mean, people are running everywhere here. We tell the
- 17 drivers to be careful, but since nothing happened, this person
- 18 left the scene, no.
- 19 Q Okay, so with that in mind, and that being the prior
- 20 accident, and he wasn't required to take the Smith -- you don't
- 21 believe he was required to take the Smith Training Course then,
- 22 so --
- 23 A Right.
- 24 Q -- he wasn't offered the chance to take the Smith Training
- 25 Course for his accident on April 20th, was he?

- 1 A Right, but you also forgot that this accident happened in
- 2 November of 2011, prior to this Smith System to be implemented
- 3 at Nellis Cab.
- So, in answer to your question, he didn't take it here,
- 5 because this was not yet even in effect yet.
- 6 Q So this would be the April 20th accident was the first
- 7 accident that he had --
- 8 A Yes.
- 9 Q -- while that was in effect?
- 10 A Right.
- 11 Q And he wasn't offered the chance to take the Smith
- 12 Training Course then, was he?
- 13 A No, because we decided to let him go.
- 14 Q Why wasn't he given a chance to take the Smith Training
- 15 Course?
- 16 A Because he had high frequency.
- 17 Q Isn't that what is being addressed in General Counsel's
- 18 Exhibit No. 30?
- 19 A Can you tell me where?
- 20 Q So, looking at the third line down --
- 21 A Uh-huh.
- 22 O There is a new sentence: "Therefore, in an effort to
- 23 promote safe driving practice, Nellis Cab Company may require
- 24 drivers who are frequently involve in at-fault or not-at-fault
- 25 accidents to complete a punitive safety training course, at the

- 1 expense of the driver," and then the sentence continues on.
- 2 So, isn't this meant to address drivers who have frequent
- 3 accidents?
- 4 A That -- that depends on how you interpret it -- this.
- 5 This is talking about that from this point on, we will watch
- 6 out for people that, in our criteria, might have two at-fault
- 7 accidents, which is frequency. We will probably put that
- 8 person, to give them another chance, and that criteria did not
- 9 fall on Mr. Amede, so no. The answer to your question, that is
- 10 not what that means. It means that from this point on, we are
- 11 going to watch frequency, but for people already like Abiy
- 12 Amede that had a lot of frequency, we were not going to offer
- 13 it to him. We would rather let him go.
- 14 Why should I wait for him to have seven? It contradicts
- 15 what we are saying right here. This is to minimize frequency,
- 16 and you are asking me why he wasn't offered, because he already
- 17 had frequency; that is why.
- 18 Q So was he told to take the Smith Training Course before --
- 19 sometime between the time that he signed the sheets on I
- 20 believe it was December 12th and April 20th? During that time,
- 21 was he told to take the Smith Training Course?
- 22 A For what?
- 23 Q For --
- 24 A He didn't have an accident. It was after April.
- 25 Q You said he already had frequent accidents, right?

- 1 A In the past. In the past he was coming on with frequent
- 2 accidents, and if we did -- the same thing we treated Mr.
- 3 Amede, we treated a lot of other employees, that you have a
- 4 list, that you haven't make me a question about the other ones,
- 5 they fall in the same criteria.
- 6 This is to minimize frequency. When we looked at Mr.
- 7 Amede, he already had high frequency. That is why he was not
- 8 offered it. We don't offer this to somebody who doesn't have
- 9 an accident.
- I don't have the manpower to check 400 drivers and say I
- 11 am going to have 400 classes for the people that had high --
- 12 from this point on, we told all of the drivers in our safety
- 13 class, watch for accidents, frequency is very important.
- 14 Frequency leads to severity, and we have implemented a Smith
- 15 System and a lot of other things that we do in order to stop
- 16 that.
- 17 Q So, you said you don't have the time to go out to -- for
- 18 the 400 drivers, I believe, and tell them to go out and take
- 19 the Smith System, so when this comes up is when they are in an
- 20 accident, right?
- 21 A Right.
- 22 O And only if they have a frequency of accident; is that
- 23 right?
- 24 A Correct.
- 25 Q So, Mr. Abiy Amede, when he had this accident, he already

- 1 had a frequency of accidents, right?
- 2 A Well, this accident put the icing on the cake. I mean, he
- 3 already had too much frequency. Even though he signed this
- 4 prior to his accident, he was aware already that we were
- 5 looking at frequency.
- 6 Q Was this policy already in place when he had the -- was
- 7 this policy still in place when he had the accident on April
- 8 20th?
- 9 A Of course. He signed it before, didn't he? He signed it
- 10 in 2011.
- 11 Q Right, but I am just wondering, did it stay in effect, so
- 12 is this -- are these policies still current?
- 13 A Yes.
- 14 Q Okay. So, when his accident came up, he fell under the
- 15 frequency of accidents, which is addressed in this, but he was
- 16 not allowed to take the Smith Training Course; isn't that
- 17 correct?
- 18 A No, because he was terminated.
- 19 MR. SMITH: And, Your Honor, I would move for the
- 20 admission of General Counsel's Exhibit No. 30(a) through 30(k),
- 21 please.
- MR. WINKLER: No objection.
- JUDGE POLLACK: General Counsel's Exhibit No. 30(a)
- 24 through (k) is received.
- 25 (General Counsel's Exhibit No. 30(a) through 30(k), received

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1 into evidence.)

- 2 MR. SMITH: Thank you, Your Honor.
- 3 Q BY MR. SMITH: Now, doesn't the Handbook also allow a
- 4 provision for drivers to pay -- there is a provision where
- 5 drivers can sometimes pay for the damage?
- 6 A A [indiscernible], yes.
- 7 Q Now, under what situations does that come up?
- 8 A Let's say a driver never had an accident under our new
- 9 policy, and we want to give him a chance his first accident.
- 10 If he has got damage to our cab, we deduct money from their
- 11 paycheck to pay for the damage that we fix, whether it is minor
- 12 or whether we send it out to a body shop.
- 13 Q So you said it is with their first accident? Is that the
- 14 only time?
- 15 A Well, it might be -- depending on the criteria that we
- 16 use.
- 17 Q And if I can get you to look at the Handbook which is
- 18 General Counsel's Exhibit No. 2, Page 33. That will probably
- 19 be the thickest packet in front of you.
- 20 A Page what?
- 21 Q Page 33.
- 22 A Okay. And I am looking down where it says "Accidents,"
- 23 the second paragraph under "Accidents." Is this the provision
- 24 of the Handbook that provides in some instances for a driver to
- 25 pay for damage?

- 1 A Yeah, right below "Accidents," yes.
- 2 Q Is there any other provision in the handbook that you know
- 3 of, that addresses an employee's ability to pay for an
- 4 accident?
- 5 A Not to my knowledge.
- 6 Q And the one-time punitive safety training course, is that
- 7 the same thing as the Smith Training Course? In other words,
- 8 is it referencing the same thing that is covered in the
- 9 Handbook?
- 10 A No. Well, it is -- that was -- it is but we used to do
- 11 something different that wasn't very effective before, which we
- 12 used to do safety classes, but this might be referring -- this
- 13 is referring to the same thing of the safety issue -- it should
- 14 say safety -- well, this one doesn't say about if they pay for
- 15 it, so I don't know if they are talking a -- if this is the
- 16 same thing as the Smith System.
- 17 Q Now, you said you used to do safety classes. Does that
- 18 mean that they stopped for a period of time?
- 19 A We used to -- we were trying to do everything that could
- 20 come to mind to stop these buys from having accidents. When I
- 21 say "safety classes," in the past, it would be prior to January
- 22 1st, 2012, anybody who got in an at-fault accident, we would
- 23 take -- bring them in and we will do like a one-on-one safety
- 24 class that we do with the whole company four times a year.
- 25 Q I am a little confused. You said "one-on-one safety

- 1 class" but you do it with the whole company. So is it -- I
- 2 just want to make sure I understand. Is it that you are doing
- 3 the safety class and it is for a large number of drivers?
- 4 A The safety class is for all of the drivers.
- 5 Q Okay, so all of the drivers are invited to attend the
- 6 safety class?
- 7 A Right.
- 8 Q It is not one-on-one with just the instructor and one
- 9 driver?
- 10 A No. This -- I am referring to what you asked me to refer
- 11 to. We do safety classes -- we do safety classes yearly for
- 12 the whole company. This is referring to something that we say,
- 13 well every time somebody gets involved in an accident, maybe we
- 14 should bring him in and give him a one-on-one, you know what I
- 15 mean, safety class, which means he has to come in and sit down
- 16 and go through a safety class by himself with a trainer.
- 17 Q Okay, now, when you said "we used to do safety classes,"
- 18 then which kind of class --
- 19 A This class -- this one.
- 20 Q The punitive --
- 21 A The one-on-one.
- 22 Q The one-on-one.
- 23 A Okay.
- 24 Q Okay. Now, did you stop doing for a period of time the
- 25 training -- the safety classes for the group?

- 1 A No.
- 2 O And how often are those held?
- 3 A The last time -- we are doing it three times a year.
- 4 Q Okay, do you remember when the last time was that you did
- 5 one?
- 6 A I think March. It was in March? Yeah, I know there is
- 7 one coming up now. So maybe it was prior. I can't remember
- 8 exactly. I don't do safety classes anymore, so I don't have
- 9 that, the dates. I know one is coming up.
- 10 Q Now, in response to the charge, I believe that Nellis had
- 11 informed the Labor Board that Mr. Abiy Amede was terminated
- 12 under a new accident policy; is that correct?
- 13 A If you want to call it that way, yeah.
- 14 Q And I believe it was stated that was in response to
- 15 insurance costs?
- 16 A Yes.
- 17 Q Now, the new policy was implemented when?
- 18 A Oh, January -- the new policy, it was January 1st of this
- 19 year. I mean, that implemented right -- we were trying to
- 20 create -- we were talking about it since December of 2012, how
- 21 -- what else can we do to teach these guys so they don't have
- 22 accidents.
- 23 Q So, when you implemented this new policy, you didn't amend
- 24 the Handbook, did you?
- 25 A We give everybody an amendment.

- 1 Q That specifically covers the insurance costs?
- 2 A The what?
- 3 Q Did you give them something that specifically addressed
- 4 the insurance costs or how --
- 5 A No. There was -- I don't have to give them that. Why
- 6 would I give them that?
- 7 Q Okay, so was there an amendment that said there was going
- 8 to be increased discipline for accidents?
- 9 A Yes, this one right here.
- 10 Q And --
- JUDGE POLLACK: Okay, were you referring to General
- 12 Counsel's Exhibit No. 30?
- 13 THE WITNESS: Yes.
- 14 JUDGE POLLACK: Okay.
- 15 Q BY MR. SMITH: So, other than having to take the punitive
- 16 safety training course, where does it say in here that there is
- 17 going to be increased discipline?
- 18 A You didn't ask me that. You asked me when did I tell my
- 19 drivers there was going to be a new policy -- a new policy, as
- 20 far as accidents. It doesn't say that in there.
- 21 O Okay, so did you not say -- is there an amendment that
- 22 says that there is going to be increased discipline for
- 23 accidents?
- 24 A Not in this amendment, no.
- 25 Q Is there any other amendment?

- 1 A Nope. There is multiples -- multiple verbal announcements
- 2 in every shift that we did since December, telling the drivers
- 3 to be careful, not to have accidents, our insurance is very
- 4 costly now, and that was done numerous times since December at
- 5 shift change, in every shift, verbally.
- 6 Q I guess I am a little confused then.
- 7 If -- you said the handbook has been amended several
- 8 times, and we have already given a few different examples.
- 9 This is a modification that results in increased discipline and
- 10 terminations, why wasn't that covered in an amendment to the
- 11 Handbook also?
- 12 A I -- I really don't have an answer for that. I thought
- 13 that by them signing this, and we giving them verbals, they
- 14 will -- they knew that things were changing. Things were going
- 15 to change. We were not going to be as tolerant as we were
- 16 before, which was said to them.
- 17 Q You didn't send -- well, you don't use e-mail to
- 18 communicate to the employees, do you?
- 19 A No, I don't.
- 20 Q So there was no e-mail sent to say that?
- 21 A No.
- 22 O Anything posted at Nellis to show them that there was
- 23 going to be increased discipline?
- 24 A No. That I remember, no.
- 25 Q So, I want to look closely at some accidents.

- 1 So, one person in particular -- actually, I will just
- 2 start going through them.
- 3 [Long pause]
- 4 MR. SMITH: I am going to hand out what has been marked as
- 5 General Counsel's Exhibit No. 60.
- 6 (General Counsel's Exhibit No. 60, marked for identification.)
- 7 MR. SMITH: And I do realize that I have skipped over
- 8 quite a few numbers.
- 9 Q BY MR. SMITH: So, looking at General Counsel's Exhibit
- 10 No. 60, this is Driver -- I believe the last name is
- 11 Haralambov?
- 12 A Haralambov.
- 13 Q Now, this is the similar type of documents related to Mr.
- 14 Amede, his accident documents, correct?
- 15 A Yes.
- 16 Q Now, was this driver, was he terminated?
- 17 A Yes, I believe so.
- 18 Q Okay, and I believe on Page (b), it says the driver was
- 19 terminated on March 2nd. But when we were looking at (a), you
- 20 said one of the things you look at in deciding whether or not
- 21 to discipline or terminate a driver is the severity of the
- 22 accident, correct?
- 23 A Correct.
- 24 Q And on the notes that is included on 60(a), the note was
- 25 that he was at fault, and where it says "7 at-faults, 4 not-at-

- 1 faults," is that the number of prior accidents this driver had
- 2 had?
- 3 A Yes.
- 4 Q Now, did that include this accident?
- 5 A I am not sure.
- 6 Q So sometimes it might include and sometimes it might not
- 7 include?
- 8 A I -- I am not sure. I couldn't answer that.
- 9 Q So when it says the dollar amount there, \$18,596.00, is
- 10 that damage that this driver has caused?
- 11 A For all of the accidents, yes.
- 12 Q Now, looking at (b), though, where it says, "Driver termed
- 13 for too many at-fault accidents," it says \$33,000.00.
- 14 A Which one?
- 15 Q On (b), Page (b).
- 16 A Oh.
- 17 [Long pause]
- 18 A That is probably a -- that is probably that I would have
- 19 to ask my -- I don't know why the number is different. Maybe
- 20 she included some reserves --
- 21 Q Well, you would have no reason to believe that one of
- 22 these was deliberately inaccurate, though, correct?
- 23 A No.
- 24 Q Okay, so it could be \$33,000.00 or it could be \$18,596.00,
- 25 right?

- 1 A Yeah, it -- she could have included reserves, because
- 2 accidents sometimes they stay open, and they have some reserves
- 3 on the side, money-wise. Damage is one thing and reserve is
- 4 another amount.
- 5 Q All right, now, going back to Page (c), we are looking at
- 6 60(c), this is an accident that occurred on January 6th of
- 7 2012, isn't it?
- 8 A October 31st of 2011, you are talking about?
- 9 Q Page (c), where it says "Dates," and at the very top, it
- 10 says January 6th, 2012.
- 11 A Okay, January -- okay.
- 12 Q So, on January 6th, 2012, is that the date of the
- 13 accident?
- 14 A That is the day of the accident.
- 15 Q Okay, now, this accident happened after the implementation
- 16 of the Smith policy; is that correct?
- 17 A Yes.
- 18 Q And he --
- 19 A Well, yes.
- 20 Q He wasn't fired -- is this a he or a she; do you know?
- 21 A It is a he.
- 22 O Okay, he wasn't fired on January 6th, was he?
- 23 A No.
- 24 Q Now, I want to take a quick look at (e). He -- this is
- 25 the same driver in (e), correct?

- 1 A In (e), yes.
- 2 Q And so this driver had just had an accident on October
- 3 31st of 2011; is that correct?
- 4 A Correct.
- 5 Q So he had an accident, an at-fault accident, if I
- 6 understand that right ion (e)?
- 7 A Yes.
- 8 Q So he had an at-fault accident. The policy was
- 9 implemented. He had another accident, and was not fired on
- 10 January 6, correct?
- 11 A That is correct -- not correct. This accident happened on
- 12 10-31-11. The policy was not implemented in 2011.
- 13 Q Okay, maybe you misunderstood what I was asking you.
- 14 A Okay.
- 15 Q He had the accident -- I will just walk through it slowly.
- 16 A Okay.
- 17 Q Okay, he had an accident on October 31st, 2011; is that
- 18 correct?
- 19 A Correct.
- 20 Q The policy was -- the Smith policy was implemented after
- 21 that.
- 22 A Correct.
- 23 Q And the -- the October 31st accident was at fault?
- 24 A That is correct.
- 25 Q So, the next accident he had, looking at (c) and (d), was

- 1 January 6th, 2012.
- 2 A Correct.
- 3 Q And at that point, he already had a lot of accidents,
- 4 right?
- 5 A Correct.
- 6 Q And he was not fired.
- 7 A At that time, no.
- 8 Q And so not until he had another accident two months later
- 9 was he fired for frequency.
- 10 A Correct.
- 11 Q And he had the damage of -- either the \$18,000 or the
- 12 \$33,000 --
- 13 A Right.
- 14 Q -- a significant amount of damage.
- 15 A Correct. That --
- 16 Q I'm sorry, I didn't mean to interrupt you.
- 17 A That is when he was fired, yes.
- 18 Q And in comparison, if we look at Mr. Amede's termination,
- 19 I am looking at General Counsel's Exhibit No. 31(b), there is
- 20 no dollar amount listed there; correct?
- 21 Well, actually, you don't have to look at this.
- 22 A No.
- 23 Q So does that mean that the dollar amount wasn't -- is
- 24 there anything in this document that shows me the dollar amount
- 25 was considered for Mr. Amede?

- 1 A Other than a little sticky note.
- 2 Q So, is that where it would normally be written on the
- 3 summary?
- 4 A Yeah, I would -- I will write it down. I will review all
- 5 of the different criterias, and if the criteria was money,
- 6 severity, I would probably write it down.
- 7 Q So based on what you see, if the money is not there, it
- 8 really wasn't --
- 9 A Right.
- 10 Q -- important?
- 11 A It is what I wrote there is frequency.
- 12 Q Okay. And when it says "C/R." Is that a camera? And I
- 13 am looking at -- there are several documents that have it,
- 14 whether it is 60(a), 60(c), there is a "C/R."
- 15 Does that mean --
- 16 A C/R --
- 17 Q -- camera?
- 18 A C/R means camera review. The drive cam.
- 19 Q And the drive cam, we have not covered that yet.
- 20 A drive cam is a camera system inside each of the cabs, is
- 21 that right?
- 22 A Yes.
- 23 Q And that records visual and audio?
- 24 A No.
- 25 Q Okay.

- 1 A It records visual on the outside, and audio and visual on
- 2 the inside.
- 3 Q Okay, so inside audio and visual. The outside is just the
- 4 video.
- 5 And these drive cams are triggered by certain things
- 6 called events, right?
- 7 A Called G-forces.
- 8 Q G-forces, okay. So when -- and these can be triggered by
- 9 things like hitting a curb?
- 10 A Correct.
- 11 Q Hitting a car?
- 12 A Correct.
- 13 Q Sliding on pavement?
- 14 A Correct.
- 15 Q Accelerating too fast?
- 16 A Yeah.
- 17 Q Or decelerating too fast?
- 18 A Could be.
- 19 Q Okay, is there anything else you can think of where the
- 20 camera would be triggered?
- 21 A Manual. It is a manual --
- 22 Q Does it have a button on it?
- 23 A Yes.
- 24 Q So when it says C/R = no event," what does that mean?
- 25 A The camera didn't trigger.

- 1 Q So, like in Amede's case, and I am looking at General
- 2 Counsel's Exhibit No. 31(b), it says, "C/R = no event."
- 3 Does that mean that whatever accidents that he had was not
- 4 significant enough to trigger the drive cam?
- 5 A Not necessarily. Now we are going -- now, we are going to
- 6 enter into a little longer explanation.
- 7 The "no event" -- actually today, after using this camera
- 8 for many years, doesn't mean that there was no G-forces or
- 9 something significant.
- I believe his was a sideswipe. The camera for some reason
- 11 triggers like this or like this [demonstrating], but not like
- 12 this, sometime -- lateral.
- 13 MR. SMITH: Okay, just so we can get that on the record,
- 14 Your Honor, about the witness making movements with his hands,
- 15 and maybe you can describe them.
- 16 JUDGE POLLACK: Okay, he made movements front and back,
- 17 and up and down.
- 18 MR. SMITH: Thank you, Your Honor.
- 19 Q BY MR. SMITH: So -- and it has got to be a significant
- 20 enough event for --
- 21 A Well, every time -- well, I am just talking from my
- 22 experience when I view the camera, every time we have a side-
- 23 swiped, I never have an event, and I asked the people, the
- 24 engineers who did this, and their answer is the camera doesn't
- 25 always record side events. In other words, if a car goes and

- 1 hits our car like this [demonstrating], sometimes it doesn't
- 2 record anything.
- 3 That doesn't mean that there was no event, but it doesn't
- 4 record it.
- 5 Q It just means it didn't reach whatever threshold it needed
- 6 to trigger it.
- 7 A Not necessarily. It just doesn't record it.
- 8 Q Okay.
- 9 MR. SMITH: Your Honor, I would like to move for the
- 10 introduction General Counsel's Exhibit No. 60.
- 11 MR. WINKLER: No objection.
- 12 JUDGE POLLACK: General Counsel's Exhibit No. 60 is
- 13 received.
- 14 (General Counsel's Exhibit No. 60, received into evidence.)
- 15 MR. SMITH: Thank you, Your Honor.
- 16 [Long pause]
- 17 Q BY MR. SMITH: I have just handed you what has been marked
- 18 as General Counsel's Exhibit No. 61.
- 19 (General Counsel's Exhibit No. 61(a) through 61(m) marked for
- 20 identification.)
- 21 O BY MR. SMITH: This is for a Jon Perdomo. Was he a driver
- 22 at Nellis?
- 23 A Yes.
- 24 Q All right, and he was terminated for accidents; is that
- 25 correct?

- 1 A Yes.
- 2 Q Now, according to the notes here, it looks like he had two
- 3 accidents in 2012 on -- one on January 18th and one on January
- 4 25th; is that right?
- 5 A Correct.
- 6 Q Okay. Now -- and I believe General Counsel's Exhibit No.
- 7 61(a) is covering the January 25th, 2012, accident; is that
- 8 right?
- 9 A Yes.
- 10 Q Now, there is something new on the notepad. It says "at-
- 11 fault, but minor to moderate." Is that referencing the costs
- 12 of the damage that the driver has caused, or what does that
- 13 mean?
- MR. WINKLER: Where are you --
- MR. SMITH: I am looking at the "Note" portion up here on
- 16 the --
- 17 MR. WINKLER: On the upper right-hand corner?
- 18 MR. SMITH: Yes, the second line.
- 19 THE WITNESS: It is -- it means -- I make notes sometimes.
- 20 It means that I went to look at the car, and it says "minor" in
- 21 it. I -- I consider that it is minor when I went to look at
- 22 the car, and I looked at the left headlight and found that it
- 23 was broken, instead of maybe the whole assembly was broken,
- 24 instead of just the lens.
- 25 Q BY MR. SMITH: And now, in this case, looking at General

- 1 Counsel's Exhibit No. 60(b), (c), and (d), this was just the
- 2 incident report or accident report that was given by D. B. Ford
- 3 for this accident?
- 4 A Yes.
- 5 [Long pause]
- 6 Q And then I believe (e) would be the pictures that would go
- 7 through with that?
- 8 A Yes.
- 9 Q And then starting with General Counsel's Exhibit No.
- 10 60(f), this is the paperwork to address his prior accident; or
- 11 the --
- 12 A Same accident.
- 13 Q -- same accident.
- 14 Sorry. And this shows damage of close to \$1,000. Is that
- 15 the insurance adjuster's estimate of the damage?
- 16 A I believe this is what he caused the adverse, \$988, you
- 17 are talking about?
- 18 Q Yes, sir. So damage to the adverse being the damage to
- 19 whatever the other car was involved in the accident?
- 20 A Right.
- 21 Q And when they review some -- this would be somebody else's
- 22 claim then coming in to -- the \$988 would be the adverse
- 23 party's claim against Nellis?
- 24 A Right.
- 25 Q And is that what it means when it says, "We have reviewed

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- 1 this estimate and it appears to be in order." Does that mean
- 2 that it has reviewed the other party's request?
- 3 A That is correct.
- 4 Q Thank you.
- Now, then, on this -- on (g), this is also related to this
- 6 accident, and these are bodily injury claims of several
- 7 thousand dollars?
- 8 A Yes.
- 9 Q Now, is that pretty common to get bodily injury claims out
- 10 of your accidents?
- 11 A Definitely.
- 12 Q And -- and I believe that is also related in (h), only it
- 13 looks like settlement offers going back and forth, is that
- 14 correct?
- 15 A Yes.
- 16 Q Okay, so those amounts, is that what would get you to the
- 17 point of saying probably a moderate accident instead of a
- 18 minor?
- 19 A Well, yes and no. At the time that I write this note, I
- 20 don't have this other, so I don't know what the outcome will be
- 21 from D. B. Ford.
- 22 Q So when you write "minor to moderate," it is just based on
- 23 what you know at that time --
- 24 A Yes --
- 25 Q -- looking at the accident?

- 1 A Yes.
- 2 Q So, now, looking at (i), this is the accident preceding
- 3 this, this is January 18th of 2012.
- 4 Do you have (i) in front of you?
- 5 A Yes.
- 6 Q Okay, so this is the same driver?
- 7 A That's correct.
- 8 Q And on this note, he is in an at-fault moderate accident,
- 9 and it says he must pay. What does that mean?
- 10 A Well, we will charge them for our damage on our car.
- 11 Q Now, is that only for the damage to the Nellis car?
- 12 A That's correct.
- 13 Q What happens if anything for damage that they do to other
- 14 vehicles? How is that handled?
- 15 A The insurance and Nellis Cab pays.
- 16 Q Okay. Now, down there at the bottom of that note, still
- 17 on (i), it says Smith System, and it looks like it was circled,
- 18 right?
- 19 A This driver was -- if wrote there, he took the Smith
- 20 System class.
- 21 Q So, when it says "Smith System," it is after he or she has
- 22 already completed it?
- 23 A No, I send them to take the Smith System class. It is not
- 24 when it is completed.
- 25 Q Okay. Now, whose decision is it normally to -- whether to

- 1 put somebody through the Smith System?
- 2 A It is between me and my general manager.
- 3 Q And that was -- I don't remember her name right --
- 4 A Michelle.
- 5 Q Michelle, okay.
- Do you remember, are you the one that decided for Mr.
- 7 Perdomo?
- 8 A Most likely, yes.
- 9 Q Is that your handwriting on this?
- 10 A Yes, it is.
- 11 Q And then looking at (j), the next page, this is also
- 12 information related to that January 18th accident, is that
- 13 correct?
- 14 A Yes.
- 15 Q And when I look at (j), there is a heading, it says,
- 16 "D/Loss," and then it has the date January 18th, 2012. Does
- 17 that stand for the date of loss?
- 18 A That is the day of the accident.
- 19 Q Okay. And again, this is some -- this is thousands of
- 20 dollars, I believe listed on (j), (k), (l), and (m). If you
- 21 can just verify for me that is all related to the same
- 22 accident?
- 23 A Yeah, this is letters going back and forth, trying to
- 24 negotiate with these people for bodily injury, and they are
- 25 related to this accident, yes.

- 1 Q And even with those amounts, he was allowed to keep his
- 2 job and do the Smith System after January 18th; is that
- 3 correct?
- 4 A Yes.
- 5 Q Okay.
- 6 MR. SMITH: I would like to offer General Counsel's
- 7 Exhibit No. 61, please.
- 8 MR. WINKLER: No objection.
- 9 THE WITNESS: May I say something else about the record?
- 10 JUDGE POLLACK: Go ahead.
- 11 THE WITNESS: This is the same accident, but I just want
- 12 to go for the record, that before you admit this, this is the
- 13 same accident, but all of the letters that the Counsel here has
- 14 referred, they are six months later. I don't want him to turn
- 15 them in that I kept this driver knowing all of this. This came
- 16 out six months later.
- 17 JUDGE POLLACK: All right. General Counsel's Exhibit No.
- 18 61(a) through (m), received.
- 19 (General Counsel's Exhibit No. 61(a) through 61(m), received
- 20 into evidence.)
- 21 MR. SMITH: Thank you, Your Honor.
- 22 Q BY MR. SMITH: So now, General Counsel's Exhibit No. 62,
- 23 this driver is -- his last name starts with a "K" and I am not
- 24 going to try to pronounce it.
- 25 A Kedanemaraim.

- 1 (General Counsel's Exhibit No. 62, marked for identification.)
- 2 Q BY MR. SMITH: Thank you.
- 3 This was for an accident on February 19th.
- 4 A Yes.
- 5 Q Now, this driver -- did this driver end up -- this driver
- 6 was terminated, right?
- 7 A Yes.
- 8 Q And this driver had had twelve total accidents.
- 9 A That is correct.
- 10 Q And eight of them were at-fault.
- 11 A That is correct.
- 12 Q And it says three of them -- well, it says a total of
- 13 \$6,200.
- 14 A Correct.
- 15 Q And three of those accidents is -- when it says three over
- 16 \$1,000, does that mean that three of the accidents were for
- 17 over \$1,000?
- 18 A That's correct.
- 19 Q And understanding that you get information over time, when
- 20 I am looking at (e), 62(e), this is some of the -- well,
- 21 actually I will start with (b), because this is only five days
- 22 after the accident on February 24th, 2012, this letter has at
- 23 least been claimed -- well over \$10,000 in claims that the
- 24 adverse is trying to get.
- No, I'm sorry. When it says, "We have set the following

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- 1 precautionary reserves," what does that mean?
- 2 A That means they are in negotiations, in arbitration with
- 3 people, so every injury has a price, so they have set aside the
- 4 amounts of money you see next to it for these individuals.
- 5 That is why it is called reserve.
- 6 Q So that doesn't mean that is the amount that is going to
- 7 be paid. It is --
- 8 A That is correct.
- 9 Q But is that number based on the adverse's claim in some
- 10 way?
- 11 A Correct. They -- they claim that they are injured, and
- 12 they -- they hire a lawyer and they say, "This is what we
- 13 want," and we say, "Okay, this is what we are going to put here
- 14 in reserve," but they also -- D. B. Ford also has knowledge of
- 15 their injuries. They need to release their injuries, and I
- 16 quess -- I am not a lawyer, but I quess everybody -- everybody
- 17 has a price, I guess. They take it from there.
- 18 MR. SMITH: I would like to offer General Counsel's
- 19 Exhibit No. 62.
- 20 MR. WINKLER: No objection.
- 21 JUDGE POLLACK: General Counsel's Exhibit No. 62 is
- 22 received.
- 23 (General Counsel's Exhibit No. 62, received into evidence.)
- MR. SMITH: And if I could just double-check, General
- 25 Counsel's Exhibit No. 60 and 61 have both been received?

- 1 JUDGE POLLACK: Yes.
- 2 MR. SMITH: Thank you, Your Honor.
- 3 [Long pause]
- 4 Q BY MR. SMITH: So, looking at General Counsel's Exhibit
- 5 No. 63, this is Driver Demtew?
- 6 A Yes.
- 7 (General Counsel's Exhibit No. 63(a) through 63(u), marked for
- 8 identification.)
- 9 O BY MR. SMITH: And the most recent accident was June 6th
- 10 of 2012; is that correct?
- 11 A Correct.
- 12 Q And the driver was terminated after this accident?
- 13 A Yes, he was.
- 14 Q Now, this driver had thirteen total accidents, plus or
- 15 minus one before he was terminated, correct?
- 16 A Yes.
- 17 Q And when I say "plus or minus one," it is because we don't
- 18 know if it includes this accident or not, correct?
- 19 A That is correct.
- 20 Q But this driver also had two prior accidents in 2012
- 21 before this one on June 6th, right?
- 22 A Correct.
- 23 Q He had one on March 22nd of 2012?
- 24 A That is correct.
- 25 Q And he also had one on February 5th of 2012.

- 1 A That is correct.
- 2 Q Now, when he had the accident on February 5th, 2012,
- 3 wasn't he already a high-frequency accident driver?
- 4 A Being the time that he was there since 2009, which I take
- 5 into consideration also, and it was not at-fault, it was
- 6 adverse, and it was a door with no damage. A passenger opening
- 7 a door into another door is not himself, doing the -- causing
- 8 the accident.
- 9 Q Okay, so you said that because he had been there since --
- 10 is that what it says when it says "HD November 14th, 2009,"
- 11 is --
- 12 A That is the date of hire.
- 13 Q So he had thirteen accidents in that time?
- 14 A That's correct.
- 15 Q Including three in 2012 before he was fired?
- 16 A Correct.
- 17 Q Now, looking back at Mr. Amede, Mr. Amede's hire date was
- 18 February 3rd of 2009.
- 19 A Mr. Demtew Tefera had other criteria that Mr. Amede might
- 20 not have had.
- 21 For example, Mr. Demtew Tefera, he was a prime shift
- 22 driver, which Mr. Amede was not performing right, and the two
- 23 accidents that he had in 2012, Demtew Tefera, one is considered
- 24 not even an accident because it was a passenger that opened
- 25 that opened the door. The other one, it was a back-in in

- 1 Nellis' yard. It was taken out of the cab and he barely hit
- 2 the other cab that was sitting next to him , so there is other
- 3 criterias that I also use, including the date of hire.
- 4 Q Okay, but the question is, at that point, didn't he
- 5 already have frequency?
- 6 A No, because the door is not considered frequency.
- 7 Q But I thought you said, and maybe I misunderstood you, but
- 8 that this policy was -- you started increasing discipline and
- 9 possible termination --
- 10 A Correct.
- 11 Q -- because of frequency?
- 12 A Correct.
- 13 Q The frequency is the number of accidents, isn't it?
- 14 A That's correct. But -- but there is an accident if we --
- 15 if the passenger opens the door in our cab, it is a frequency
- 16 on my driver's skills to drive, or is it a passenger that just
- 17 when and opened the door.
- 18 So, in other words, in 2012, I don't even consider the
- 19 door as a frequency.
- 20 Q Aren't the drivers obligated in the Handbook to watch out
- 21 for doors?
- 22 A Correct.

23

- 24 Q Sop you don't -- even though that is what the Handbook
- 25 sys, you don't hold that against the driver if the passenger

- 1 causes the door damage like that?
- 2 A When I say door, if I can explain, I am talking about
- 3 other cab opening the door into our door, other passenger. Not
- 4 drivers being involved in any way with the door opening..
- 5 Doors -- if our passengers open the door, we don't consider
- 6 that a door. That is supposed to be door damage or whatever,
- 7 but it says here, "Door, no damage, not at fault."
- 8 Q So based on that, you said that on February 5th, he didn't
- 9 have frequency?
- 10 A No, because this is a door opened by the other passenger
- 11 and not a car, because that is how we determine no damage, not
- 12 at fault. If this was his passenger opening the door, where we
- 13 say, "Watch for your door," he would have been at fault.
- 14 Q So, that is February 5th. Looking at March 22nd, wouldn't
- 15 he have had frequency at that point?
- 16 A Yeah, he is involved. Yeah, it would have been a little
- 17 -- I give him a chance.
- 18 Q So, at that point, he had twelve or thirteen accidents,
- 19 counting that one.
- 20 A Right.
- 21 Q So -- but he wasn't terminated then.
- 22 A No, but I terminated him the next time.
- 23 Q You terminated the next time but --
- 24 A Yeah.
- 25 Q -- that was at twelve or thirteen accidents, and that was

- 1 quite a few more than Mr. Amede, wasn't it?
- 2 A Right. Yeah, I don't judge the accident by anybody --
- 3 like Mr. Amede. I go -- you are showing me a piece of paper
- 4 here and you are asking me why didn't I fire him this --
- 5 before. I can guarantee you if I go through his file, there
- 6 has got to be a reason why I give him more chances.
- 7 The criteria that is in place here is Mr. Amede, and that
- 8 is the only one I am familiar with, but you are asking me about
- 9 somebody that I have no idea why, but I did terminate him
- 10 anyway.
- 11 Q Okay. Now, you said there were other factors. You said
- 12 his shift, but none of those were listed on the notes for Mr.
- 13 Amede; is that correct?
- 14 A I don't have to list it.
- 15 Q I understand. I didn't say you have to, but you didn't
- 16 list that as one of the criteria you considered when you fired
- 17 him, did you? When you fired Mr. Amede, you didn't mention
- 18 anything other than high frequency, correct?
- 19 A That's correct.
- 20 Q So what you said about there are other factors that might
- 21 come into play, that is not reflected in Mr. Amede's paperwork,
- 22 right?
- 23 A But it is in my -- when we look at it when we review it --
- 24 I don't know how to explain it.
- When we review it, this aren't just notes that I do.

- 1 Notes from my own knowledge that I review the rest. He had
- 2 high frequency and he was a low producer.
- 3 Q Okay, why didn't you write down that he was a low
- 4 producer?
- 5 A Because I didn't feel like it. I don't have to. If I am
- 6 referring to one guy, I do. You see others, and I know you
- 7 just pulled the ones that -- but you see others that I don't
- 8 even do that for this one either.
- 9 Q Okay.
- 10 A There is not nothing there. It is just notes that I make
- 11 for myself.
- 12 Q And usually what you write on these notes is what is
- 13 significant, isn't it?
- 14 A Of course, that gets me to research and look for criteria,
- 15 whether I am going to fire this guy, not going to fire this
- 16 guy, am I going to give him another chance, put him through the
- 17 system, the Smith System, all kinds of different things.
- 18 Q Okay. Now, the documents that, I believe that follow
- 19 through -- I believe there may be some duplications in here;
- 20 (h) looks like it is a duplication of (a), so if we go to (i),
- 21 this goes back to the February 11, 2012 accident, and that is
- 22 the door, isn't it? Is that the door?
- 23 A Which one are you looking at? I mean, what exhibit,
- 24 please?
- 25 Q Well, I am looking at (i), and I am trying to figure this

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- 1 out --
- JUDGE POLLACK: Which number, 63?
- 3 MR. SMITH: 63(i).
- 4 Q BY MR. SMITH: There is a date of February 11, 2012.
- 5 [Long pause]
- 6 Q But looking at (i), this is the same driver, isn't it?
- 7 A Tefera, yes.
- 8 Q Now, although this says February the 11th, that doesn't
- 9 match up to any of the dates on 63(a). Do you know if this is
- 10 one of those accidents or is this an additional accident?
- 11 A This is -- this is the -- this is I-15 north of Sahara
- 12 Ramp.
- 13 Q Let me ask you one question on this. Is this -- this is
- 14 not a door incident then, is it?
- 15 A No, no.
- 16 Q So when this accident happened on February 11th, at this
- 17 point, he had high frequency, didn't he?
- 18 [Long pause]
- 19 A I cannot answer you to that, because this are notes that I
- 20 make, and they don't match.
- 21 O Okay. Well, if you knew that he had about thirteen when
- 22 he had the accident on June 6th, and your notes show that he
- 23 had an accident on March 22nd, which is not this accident that
- 24 we are just looking at now, and I believe you said at that
- 25 point, he was frequency, so now we have this other accident,

- 1 this February the 11th. Based on your notes, wouldn't he have
- 2 been frequency then also?
- 3 A Yeah. Yes.
- 4 Q Now, at that point, and I am looking at (i), the -- the
- 5 note that is on there on (i), in the upper right-hand corner,
- 6 is that your handwriting on that note?
- 7 A It says "not at fault, rear-end damage to our vehicle,
- 8 camera review, manual, after the fact," yes.
- 9 Q So, according to this, he was not even required to take
- 10 the Smith class, was he?
- 11 A No.
- 12 Q Do you remember him having to take the Smith class?
- 13 A By looking at this document, I couldn't tell you. He
- 14 could have.
- 15 You need to understand that sometimes I make this -- these
- 16 stickies before I review this accidents, and you are asking me
- 17 questions about notes that I make on February 11th, and he
- 18 could have -- he could have taken the Smith system class. That
- 19 is a total different file.
- 20 Q But on his notes, you have also written though that
- 21 drivers were terminated, correct?
- 22 A That is correct.
- 23 Q So is that written also before you have looked at the
- 24 file? I believe you said that sometimes you write these notes
- 25 before you have really looked at what is going on.

- 1 A That is correct. When I write "term," is because I
- 2 already looked and did my research.
- What you are asking me now is a different question. This
- 4 note that is here, it doesn't say terminated, and I did not
- 5 terminate him in -- on February 11th, but I probably sent him
- 6 to the Smith System. I could have very well sent him to the
- 7 Smith System and kept the driver.
- I can testify to tell you that -- did he go? I don't
- 9 know.
- 10 Q Okay. Now, you said at some point in the file, they are
- 11 closed, right? The accident file gets closed at some point,
- 12 right?
- 13 A At some point, yeah.
- 14 Q Who closes them?
- 15 A The insurance adjuster, D. B. Ford, or the insurance
- 16 company.
- 17 Q So, do you look at them at some point before they are
- 18 closed -- well, do you look at them before they are closed,
- 19 first?
- 20 A I look at when it happens, yes.
- 21 Q And then do you update your notes before the file is sent
- 22 away and closed?
- 23 A No, that is my assistant, and I don't do that.
- Q Okay, so when does it come into play that they were
- 25 terminated?

- 1 A At the time of the accident.
- 2 Q Okay. Now, looking at (p), this is February 5th. I will
- 3 give you a moment.
- 4 A Okay, this is the door.
- 5 Q This is the door. Now, on this one, it says that it is an
- 6 at-fault accident, correct?
- 7 A Yeah, that is a misprint. Because if you look in the
- 8 comments, he is not at fault. The door was already opened and
- 9 he was waiting to get paid.
- 10 So when I look at all of these different things, I
- 11 determine that he -- like I wrote -- you see the difference
- 12 between my primary notes here? I put "at fault, minor, door?"
- 13 When I do all of my investigation, I came out, "Door, not
- 14 at fault," on the 2-5 note. That is what I am saying. This
- 15 are my notes.
- 16 Q I'm sorry, where are you talking about?
- 17 A On the February 5th, which is (p), it says, "at fault,
- 18 minor, door," written by me, on the corner sticky.
- 19 Q And what did you say it said, some point, it says --
- 20 A And on the first page on 63(a), it says on -- where I
- 21 listed all of his accidents, it says, "Door -- no damage, not
- 22 at fault. Passenger opened door."
- 23 Q Now, when you referenced where it says "Comments," you
- 24 referenced that like as if the driver was not at fault, but
- 25 isn't that just a summary of what the driver claimed?

- 1 A No, that is my supervisor.
- 2 Q Right, but reading through it, it says that, "Our driver
- 3 said," and then it gives the driver's story; is that right?
- 4 A That's correct.
- 5 Q All right, so what is in the comments doesn't necessarily
- 6 mean that is the fault determination, is it?
- 7 A Well, that is up to me. If I look at, you know, the
- 8 situation, talking to the supervisor, Doug Mall, and he just
- 9 repeated what the -- what our driver said. I look at the --
- 10 sometime I talk to the driver, and then I also talk to D. B.
- 11 Ford, and I refer myself to all of those people, and then I
- 12 make my determination. My determination was that he was not at
- 13 fault because probably I talked to D. B. Ford. D. B. Ford
- 14 talked to some witnesses, and they determined that the door was
- 15 opened like the driver said.
- 16 So, no, I am not assuming. I do my research with the
- 17 investigation.
- 18 Q But the two documents, the one on (p) and (a), one says at
- 19 fault for the same accident and the other one says not at
- 20 fault, correct?
- 21 A Because that was after the fact. Remember, on (p), is
- 22 when I first get my accident, when I first take a look at it.
- 23 Obviously, I had reviewed this accident, and you are asking me
- 24 about a sticky on 63(a), where the same accident happened on
- 25 February 5th, I wrote "not at fault," meaning that it was after

- 1 the fact -- it wasn't done yet.
- 2 Q Okay, do you remember what it was that caused you to
- 3 change your mind?
- 4 A I just told you. I talked to Doug Mall, my supervisor. I
- 5 talked to D. B. Ford. D. B. Ford might have talked to some
- 6 witnesses that would have made me change my mind.
- 7 Q Do you remember that?
- 8 A Do I remember that?
- 9 O Yes.
- 10 A Most likely, if I did it, yes.
- 11 Q Okay, when you say "most likely," do you remember it, yes
- 12 or no?
- 13 A I don't remember, but that is what I do.
- 14 Q I understand that is what you do, but do you remember this
- 15 particular circumstance?
- 16 A You are asking me about if I remember word by word, no.
- 17 Q Thank you.
- 18 Now, looking at (u), this is an accident involving the
- 19 same driver on December 8th of 2011.
- I will give you a moment to find it. It should be the
- 21 very last page in the packet.
- 22 A Okay.
- 23 Q So now, at this point, your note shows that he already has
- 24 nine accidents at that point.
- 25 A Uh-huh.

- 1 Q Wouldn't he be a frequency driver -- a frequency accident
- 2 driver at that point?
- 3 A With nine total accidents?
- 4 O Yes.
- 5 A I -- on December 8th, 2011?
- 6 Q Yes.
- 7 A Not the way we were operating then.
- 8 Q Not the way -- okay, so on December 8th, you didn't
- 9 consider it a frequency.
- 10 A No.
- 11 Q But the next one would have been ten or more --
- 12 A Right.
- 13 Q -- and at that point he would have been frequency?
- 14 A Could have been. Depend if I look at the different
- 15 criterias that I give people chances. It could have been. He
- 16 was nine on December and it was thirteen in 2012, and that is
- 17 when we terminate him. Well, that is -- there it goes. We
- 18 give him a chance and we terminate him.
- 19 Q But you actually gave him three more chances after this
- 20 one.
- 21 A Well, I say -- I repeat myself again. I cannot really
- 22 dissect and tell you exactly why, but there are different
- 23 criterias that I look to give certain drivers than the other
- 24 ones -- maybe one more chance than the other one, because I
- 25 look at different things.

- 1 Q Okay.
- 2 A And I can't tell you by looking at this document and my
- 3 notes.
- 4 MR. SMITH: Move for the admission of General Counsel's
- 5 Exhibit No. 63.
- 6 MR. WINKLER: No objection.
- JUDGE POLLACK: General Counsel's Exhibit No. 63(a)
- 8 through (u) are received.
- 9 (General Counsel's Exhibit No. 63(a) through 63(u), received
- 10 into evidence.)
- 11 MR. SMITH: Thank you, Your Honor.
- 12 [Long pause]
- 13 Q BY MR. SMITH: Now, in looking at General Counsel's
- 14 Exhibit No. 64(a), this is Thomas Hardy, I believe.
- 15 (General Counsel's Exhibit No. 64(a) through 64(o), marked for
- 16 identification.)
- 17 Q BY MR. SMITH: Now, in Mr. Hardy's case, he had four total
- 18 accidents, correct?
- 19 A Yes.
- 20 Q But one of them was a really big one; is that right?
- 21 A [[No response]
- 22 O April 3rd, 2011, is that \$23,000 in damage?
- 23 A Yes. Yeah, again, I don't know if that is reserves or if
- 24 that is the cost of the accident.
- 25 Q How long does it take normally to resolve an close an

- 1 accident file?
- 2 A It changes. I mean, I could give -- there is no such set
- 3 date. It could be five years, like we had one, or it could be
- 4 ten. It could be one.
- 5 MR. SMITH: Your Honor, could I have a moment off the
- 6 record, please?
- JUDGE POLLACK: Off the record, please.
- 8 [Off the record]
- 9 JUDGE POLLACK: Back on the record, please.
- 10 Q BY MR. SMITH: So, I believe the (a) through (g), I
- 11 believe these all reference the -- no, I'm sorry, I will
- 12 withdraw that.
- Okay, (a) through (e), I believe those all reference the
- 14 July 11th, 2012 accident, and actually, let me change that,
- 15 too, because -- starting on (b), that is actually an older
- 16 accident because it pre-dates the July accident, is that
- 17 correct?
- 18 A That's correct.
- 19 Q So, in this May 15th accident, this is where Mr. Hardy
- 20 rear-ended somebody. Is that what R/end is?
- 21 A Let's see. Yes, rear end.
- 22 Q And is that when you rear-end somebody, is that never a
- 23 not-at-fault accident?
- 24 A Yes.
- 25 Q I'm sorry?

- 1 A Yes.
- 2 Q It is a -- well, maybe I should rephrase the question
- 3 because I asked is it "never" a not-at-fault.
- 4 Rear-end is always an at-fault accident, is that correct?
- 5 A Correct. If you rear-end -- if my driver rear-ends
- 6 somebody else, it is an at-fault accident.
- 7 Q Okay, thank you.
- 8 And then, May 15th, starting on (h), we have got a May
- 9 15th accident, and looking at the notes, I believe at that
- 10 time, three, plus or minus, total accidents, and all three have
- 11 been at fault, at that point? Is that right?
- 12 A It is -- that is what I wrote there, right.
- 13 Q And, in fact, again, we have the reference for the April
- 14 3rd, 2011 accident on the notes, and it is \$23,000?
- 15 A On my sticky?
- 16 Q On your sticky, yes.
- 17 A Yes.
- 18 Q Now, even with that as the past history going in here, he
- 19 was allowed to take the Smith System after this accident, is
- 20 that correct?
- 21 A Correct.
- 22 Q Okay.
- 23 A You didn't refer to the other ones that were zero money.
- 24 Q Yes, but even if they were zero money, they would still
- 25 contribute to frequency, isn't that correct?

- 1 A Frequency, correct.
- 2 Q So, there was actually another accident in 2012 before
- 3 this one, an accident -- an accident going back to February 5th
- 4 of 2012, and I believe that is on (m).
- 5 A July 10th?
- 6 Q February 5th. The sheet on top of that. You are looking
- 7 at (m).
- 8 A Yes.
- 9 Q So, on February 5th, the same driver had an accident,
- 10 correct?
- 11 A February 5th, yes.
- 12 Q All right. So this driver has had three accidents in
- 13 2012, and it was after that last accident that he was finally
- 14 terminated?
- 15 A Correct.
- 16 Q And just -- I have got a quick question on (1). Is that
- 17 the training -- representative of the training that the drivers
- 18 have to take?
- 19 A That is correct.
- 20 Q When they are told to take the Smith System?
- 21 A That is correct.
- 22 Q Thank you.
- MR. SMITH: I would like to offer General Counsel's
- 24 Exhibit No. 64.
- MR. WINKLER: No objection.

- 1 JUDGE POLLACK: General Counsel's Exhibit No. 64(a)
- 2 through (n) are received.
- 3 Oh, that is not (n). It is 64(a) through 64(o) are
- 4 received.
- 5 (General Counsel's Exhibit No. 64(a) through 64(o), received
- 6 into evidence.)
- 7 MR. SMITH: Thank you, Your Honor.
- 8 Q BY MR. SMITH: I have just handed you what has been marked
- 9 as General Counsel's Exhibit No. 65.
- 10 (General Counsel's Exhibit No. 65, marked for identification.)
- 11 Q BY MR. SMITH: This is for driver Isidoro Palmeri; is that
- 12 correct?
- 13 A Yes.
- 14 Q Now, Mr. Palmeri was fired, correct?
- 15 A If you say so. I don't recall all of the names.
- 16 Q Okay. Do you remember that Mr. Palmeri had been in --
- 17 well, first off, does this show his hiring date on here?
- 18 A No.
- 19 MR. SMITH: And, Your Honor, I can get the documents, but
- 20 I have had prior documents from Counsel that shows that Mr.
- 21 Palmeri was hired in January of 2012, and was terminated after
- 22 five accidents.
- I can get the date for that also, but it would require a
- 24 few moments off the record.
- 25 [Long pause]

- 1 MR. SMITH: Your Honor, if we can go off the record, I
- 2 will go grab those so that I can show Mr. Winkler.
- 3 [Long pause]
- 4 MR. WINKLER: Okay, here we go. Hire date, 1-27-12, and
- 5 it has got --
- 6 MR. SMITH: So, I think what I will do is offer it --
- 7 MR. WINKLER: I will eventually introduce everything, but
- 8 go ahead.
- 9 MR. SMITH: Okay.
- 10 And, Your Honor, I would like to offer a stipulation that
- 11 Mr. Palmeri was hired on January 27th, 2012, and had accidents
- 12 on March 23rd, April 9th, April 14th, May 5th, and May 7th of
- 13 2012.
- MR. WINKLER: Okay, I will also stipulate.
- 15 JUDGE POLLACK: Thank you.
- 16 MR. SMITH: Thank you.
- MR. WINKLER: Even with my magnifiers, I have a hard time
- 18 reading small print. Sorry.
- 19 Q BY MR. SMITH: Now, when an employee hires in, they are
- 20 considered a probationary employee, aren't they?
- 21 A Correct.
- 22 Q And how long does probation last?
- 23 A Ninety days.
- 24 Q So, he --
- 25 A Up to --

- 1 Q I'm sorry?
- 2 A Up to ninety days.
- 3 Q So during -- he already had accidents during his
- 4 probationary period, correct?
- 5 A I don't know. I don't have anything in front of me that
- 6 would --
- 7 Q Okay. Do you have General Counsel's Exhibit No. 65?
- 8 A I got one accident.
- 9 Q Okay. And in this one, I see there are no notes, but do
- 10 you remember Mr. Palmeri?
- 11 A Vaguely; not very well.
- 12 Q Do you remember what you did after his first accident?
- 13 A Not by looking at the accident, I couldn't tell you.
- 14 Q Do you remember whether you disciplined him at all after
- 15 the first accident?
- 16 A I couldn't tell you either.
- 17 Q Okay. Do you remember what happened after his second
- 18 accident?
- 19 A I have to look at accidents to discuss and bring back my
- 20 memory. I can't --
- 21 MR. SMITH: And, Your Honor, if I could grab a couple more
- 22 files, I believe I could bring in some more information on Mr.
- 23 Palmeri, but I don't think it is really going to be -- I will
- 24 just move forward.
- JUDGE POLLACK: Okay, go ahead.

- 1 Q BY MR. SMITH: So just going on what you remember, do you
- 2 remember having a conversation with him after his third
- 3 accident?
- 4 A If he did have three accidents, as you say, I would
- 5 probably put him in the Smith System. It depend on the
- 6 accident. I really don't know. I am only looking at this
- 7 accident here, the door opening.
- 8 Q So -- but at that point, if he has had three accidents in
- 9 that period of time --
- 10 MR. SMITH: Your Honor, if I can go off the record, I will
- 11 grab some more documents to clear this up.
- 12 JUDGE POLLACK: Off the record.
- 13 MR. SMITH: Thank you, Your Honor.
- 14 [Off the record]
- JUDGE POLLACK: Back on the record, please.
- 16 MR. SMITH: Now, Your Honor, I would also like to offer a
- 17 stipulation that Mr. Palmeri was terminated on or about May 8th
- 18 of 2012.
- 19 MR. WINKLER: So stipulate.
- JUDGE POLLACK: Okay, thank you.
- 21 O BY MR. SMITH: Now, Mr. Pino, I can show you a couple
- 22 documents here for Mr. Isidoro to see if it can refresh your
- 23 recollection of his --
- 24 A Okay.
- 25 Q -- situation.

- 1 A Okay.
- 2 MR. SMITH: And I can just set aside a temporary number of
- 3 65. I don't plan on introducing it into evidence.
- 4 [Long pause]
- 5 Q BY MR. SMITH: I am going to show you the accident file
- 6 for two of Mr. -- if you can take a look at those and just let
- 7 me know when you have had a chance to take a look at them,
- 8 please.
- 9 A Okay.
- 10 Q Okay. You have had a chance to take a look at both of
- 11 them?
- 12 A Both of them, yes.
- 13 Q Does that refresh your recollection -- let me pull those
- 14 back away from you.
- Does that refresh your recollection at all of Mr.
- 16 Palmeri's situation?
- 17 A Yeah, he had two not-at-fault accidents.
- 18 Q Okay. Did it help you remember any of the other accidents
- 19 that he was involved in?
- 20 A No.
- 21 Q Okay. Do you know why, for being such a short-term
- 22 employee, why he was allowed to have five accidents before he
- 23 was terminated?
- 24 A I can tell you that the two accidents that you just showed
- 25 me was really minor accidents, and they were not-at-fault.

- 1 That could be one of the criterias that I could have used on
- 2 that.
- 3 The other one that you show me here is probably because it
- 4 was a door opening, and the other two I have no idea why, so I
- 5 don't know.
- 6 Q And we didn't get those other files.
- 7 So the door opening in this case, and this is on May 7th,
- 8 on General Counsel's Exhibit No. 65 --
- 9 A Uh-huh, yes.
- 10 Q -- that was enough to go ahead and cause his termination,
- 11 right?
- 12 A I don't even remember if I terminated him from this
- 13 accident. I can't remember which accident that I terminated
- 14 him from.
- 15 O Okay. You don't --
- 16 JUDGE POLLACK: This accident was May 7th, and he was
- 17 terminated --
- 18 THE WITNESS: Oh, okay. So then this was the accident
- 19 that I did terminate him.
- 20 MR. SMITH: Thank you.
- 21 Your Honor, I would like to offer General Counsel's
- 22 Exhibit No. 65, and I believe I misspoke earlier when I was
- 23 talking about the files. I think I designated I missed 65, but
- 24 I would like to offer General Counsel's Exhibit No. 65 into the
- 25 record, now.

- 1 MR. WINKLER: No objection.
- 2 JUDGE POLLACK: Okay, General Counsel's Exhibit No. 65 is
- 3 received.
- 4 (General Counsel's Exhibit No. 65, received into evidence.)
- 5 MR. SMITH: Thank you, Your Honor.
- 6 Q BY MR. SMITH: And if Mr. Palmeri was hired January 27th
- 7 of 2012, as we had stipulated, then every single one of his
- 8 five accidents would have happened under the new policy, is
- 9 that correct?
- 10 A Yes.
- 11 [Long pause]
- 12 Q Mr. Pino, I have handed you what has been identified as
- 13 General Counsel's Exhibit No. 70.
- 14 (General Counsel's Exhibit No. 70, marked for identification.)
- 15 Q BY MR. SMITH: Okay, now, Mr. Pino, this is based off of
- 16 subpoenaed documents for GPS logs that we were provided.
- 17 Unfortunately, though, when looking at the far left column --
- 18 well, first off, we don't see an address in the information
- 19 that was provided to us, and I don't know whether or not you
- 20 would be able to identify the information on the left as being
- 21 some type of placeholder or representation of the address or
- 22 not.
- 23 A Never seen this before.
- 24 Q Okay. Other than that far left column, that is the
- 25 similar format to what is used for your GPS logs; is that

- 1 correct?
- 2 A The left?
- 3 Q Other than the left column, so you have got a date, the
- 4 time --
- 5 A The date.
- 6 Q -- it looks like every five minutes.
- 7 A Right.
- 8 Q And then "none," which -- is there a GPS category that
- 9 shows up in your logs for none?
- 10 A No. No, not to my knowledge.
- 11 Q And then what looks like the latitude and longitude.
- 12 A That is what it looks like.
- 13 Q And then "zero" which in a GPS log, they record speed;
- 14 correct?
- 15 A Correct.
- 16 Q And then 506, and 506 is one of the cab numbers that you
- 17 operate, correct?
- 18 A One of the cab numbers we operate, yes.
- 19 Q Okay. So, unfortunately, because the GPS documents, the
- 20 way they were submitted, they don't have an actual address,
- 21 which you have after the sheet is a map that lists the
- 22 coordinates up at the top sheet. So, if you are looking at
- 23 (b), you are looking at coordinates?
- 24 A That's correct.
- 25 Q Okay. Now when you see a GPS log that lists the same or

- 1 very similar coordinates for multiple intervals, that generally
- 2 means that the cab is not moving; is that correct?
- 3 A Yeah, if you see -- if you see a red ball or a green ball
- 4 for fifteen minutes, it means the cab is sitting somewhere,
- 5 wherever it is sitting. It is not moving.
- 6 Q So is it just a visual display or --
- 7 A Yes.
- 8 Q Okay.
- 9 A It is on the screen of the computer.
- 10 Q Does it give any kind of audible alert also?
- 11 A No.
- 12 MR. SMITH: So, in this, and unfortunately this is -- we
- 13 had discussed the subpoena issue earlier, if we could get the
- 14 trip sheets that would go with these GPS logs, because
- 15 unfortunately what we are -- what we have here are GPS logs
- 16 from the subpoenaed documents, without something to tie it to,
- 17 so I will be kind of limited in the questions that I can ask
- 18 the witness.
- 19 JUDGE POLLACK: Well, what is the purpose of this?
- 20 MR. SMITH: One of the things -- well, in looking at
- 21 70(a), when it shows that the cab is parked for that long,
- 22 other than bringing up this light, there is no other special
- 23 thing that brings your attention to a cab parked for a period
- 24 of time.
- 25 Q BY MR. SMITH: Is that right?

- 1 A The dispatchers, they do. They look at the so-called
- 2 green and red balls. Every fifteen to thirty minutes, they
- 3 keep looking.
- 4 Q Is there anything else that a cab being parked for a long
- 5 period of time would trigger other than these green and red
- 6 balls?
- 7 A Well, like I told you before, if they are sitting at the
- 8 airport for a long period of time, but the dispatcher knows
- 9 that they are at the airport because there are no flights
- 10 coming in, they could be there for an hour.
- 11 Q So, one of the --
- 12 MR. SMITH: With that in mind to try to answer your
- 13 question, Your Honor, is that these -- each of these logs is
- 14 from the subpoenaed documents which shows the cab being parked
- 15 for a period of time, but we don't have the trip sheet to try
- 16 to see what was the cab doing at this time, what was this
- 17 driver who was driving Cab 506, were they -- what were they
- 18 logging on their trip sheet. You know, why wasn't this
- 19 flagged, and was this a long break, and what we end up with is
- 20 a map to a location and a GPS log that shows that the -- that
- 21 the cab was parked for some period in time and -- including on
- 22 70(a), what appears to be about two hours, but we don't have
- 23 the trip sheets to go with that to see what else was going on
- 24 with the driver.
- JUDGE POLLACK: So, what am I to do with this?

- 1 MR. SMITH: I would like to ask if we can get the trip
- 2 sheets for -- just for this limited set, instead of going for
- 3 that on the whole subpoena item that we were looking for
- 4 before. This would give a much narrower picture of what is
- 5 going on and targeted on where it looks like the cab was parked
- 6 for a long period of time.
- JUDGE POLLACK: Well, okay.
- 8 MR. WINKLER: Well, there are some trip sheets which,
- 9 unfortunately, are in storage right now, and we don't have
- 10 access to that at this particular moment. We will in a week or
- 11 two, but we don't have access to it. It is probably the one
- 12 set of documents that we weren't able to access in the last two
- 13 days.
- But I asked many times in prior -- well, prior to
- 15 discussion with the prior judge, and in conference calls, and
- 16 with Counsel, and I don't understand the significance of this.
- 17 When you are looking at this -- when you are talking about
- 18 disparate treatment for the February 4 incident, about whether
- 19 other people might have had long breaks and not been
- 20 disciplined, well usually the purpose of showing disparate
- 21 treatment shows the real reason for the activity [inaudible]
- 22 union activity and basically in our answer, we basically
- 23 acknowledge that we -- that we have discipline for the
- 24 unprotected conduct, so it really comes down to the question of
- 25 whether it is unprotected or not.

- 1 So, I -- these -- we had to go to our customers' customers
- 2 in order to have them do a program, go back in time for the GPS
- 3 reports, which are basically -- don't show us anything, and I
- 4 doubt that the trip sheets will show us anything other than
- 5 being in a certain location for period of time. If it is the
- 6 airport, that is understandable. For the others, still you
- 7 don't know. I mean, it is nothing -- it is nothing that --
- 8 Well, the testimony is and we can get the dispatcher in
- 9 here and others, but you don't see a whole bunch of people, a
- 10 whole bunch of cab drivers at one location at the same time,
- 11 and just sitting there for, you know, an hour or two. That is
- 12 what is so incredibly unusual here, and that is what brought on
- 13 the investigation.
- So, you -- you just aren't going to find anything like
- 15 that out there. You might find one person out there for a
- 16 period of time, and we wouldn't have the slightest idea of
- 17 whether --
- 18 JUDGE POLLACK: I tend -- I tend to agree.
- 19 It seems to me that the Respondent has admitted that the
- 20 -- that these employees were suspended because of engaging in
- 21 misconduct --
- 22 MR. SMITH: And --
- 23 JUDGE POLLACK: -- so it seems to me there is no issue
- 24 about disparate treatment or not. They are conceding that this
- 25 is why the employees were -- their argument is that it was

- 1 unprotected conduct. Your argument is that it was protected
- 2 conduct.
- 3 So I don't see how it is relevant that there are other
- 4 incidences were long breaks were taken and not disciplined.
- 5 MR. SMITH: Well, where I think it comes into play is two
- 6 things, and one Counsel addressed but the other one not.
- 7 One is the long breaks and whether discipline was issued.
- 8 The other thing is whether there was falsification of trip
- 9 sheets, because if we are looking at what is marked as, I
- 10 believe, (kk), what looks like a three-hour break from 11:08
- 11 in the morning until 2:08 in the afternoon, or at least three
- 12 hours of non-movement, it is kind of hard to figure out what
- 13 that is and what this person was writing on the -- on his trip
- 14 sheet.
- JUDGE POLLACK: Well, it seems to me that that is going to
- 16 something else.
- 17 MR. SMITH: Okay, well, with this, the questioning would
- 18 be very limited, if anything at all, and I think I basically
- 19 covered the gist of it in the two pages.
- 20 I would like to offer it for whatever limited worth that
- 21 it has, but that is kind of the thing that I am stuck with with
- 22 the subpoenaed documents, other than either asking for an
- 23 adverse inference for the non-production, or that Respondent
- 24 not be allowed to produce as part of its case, documents which
- 25 should have been produced as part of this subpoena.

- 1 JUDGE POLLACK: Well, I don't think Mr. Winkler is
- 2 intending to offer the trip sheets for --
- MR. WINKLER: No. No, other than the trip sheets that are
- 4 already in evidence, that are specifically used for this one
- 5 specific walk-out, and those are already in evidence. I have
- 6 no other intention to look at other trip sheets introduce them
- 7 at all.
- 8 JUDGE POLLACK: All right, I will put the 70 in a
- 9 Rejected Exhibit File.
- 10 (General Counsel's Exhibit No. 70, was REJECTED and placed in a
- 11 Rejected Exhibits File.)
- 12 MR. SMITH: Thank you, Your Honor.
- 13 If I could have a moment off the record, Your Honor, I
- 14 would like to just double-check something.
- JUDGE POLLACK: Off the record, please.
- 16 MR. SMITH: Thank you, Your Honor.
- 17 [Off the record]
- 18 JUDGE POLLACK: Back on the record, please?
- 19 Q BY MR. SMITH: I have just handed out what has been marked
- 20 as General Counsel's Exhibit No. 80 through 86.
- 21 (General Counsel's Exhibit No. 80 through 86, marked for
- 22 identification.)
- 23 Q BY MR. SMITH: Are these documents that you are familiar
- 24 with, Mr. Pino?
- 25 A Yes.

- 1 Q Okay, and what are these documents?
- 2 A These are monthly average variance ranking report for each
- 3 driver that worked in those cabs, at that particular time.
- 4 Q So when you said monthly, does it go back a certain period
- 5 of time?
- 6 A It goes back twelve months.
- 7 Q Okay, so when we are looking at General Counsel's Exhibit
- 8 No. 80, that says January of 2012, it covers up through the end
- 9 of January 2012?
- 10 A No, if you will look on the top it says, it says from
- 11 February 1st, 2011, to January 29th, 2012.
- 12 Q So up through the end of January?
- 13 A Yeah, going back.
- 14 Q Going back.
- 15 A Yeah.
- 16 Q Okay, now, what does this mean when we are looking at
- 17 these numbers? There are a series of numbers underneath the
- 18 dates. Some of them are positive and some of them are
- 19 negative. What are --
- 20 A This is -- it tells me the driver's ranking average report
- 21 for each month, and these numbers are represented by a
- 22 percentage. This -- the daily ranking report that you showed
- 23 me earlier, that is money. This is percentage.
- Q Okay, so this is percentage. That is percentage below the
- 25 average book for their shift?

- 1 A Yes, or plus.
- 2 Q Or plus. Okay.
- 3 So, when we are looking at like -- let's look at General
- 4 Counsel's Exhibit No. 80, the very first employee on days,
- 5 Agcevic?
- 6 A Correct.
- 7 Q He was -- it says a weighted average of minus 2.
- 8 A Correct.
- 9 0 What does that mean?
- 10 A This is also -- I mean, this rank -- I mean it is listed
- 11 alphabetical, not like the daily ranking report, the first
- 12 booker.
- 13 A minus 2 means that he was hired sometime in September of
- 14 2011, and as you can see, it says minus 32 percent, plus 22
- 15 percent, plus 9 percent, plus -- minus 12 percent. January
- 16 2012, minus 33 percent. It gives him an overall average of
- 17 minus 2.
- 18 Q So the weighted -- and is that the summary of the prior
- 19 month?
- 20 A Right.
- 21 Q Okay, and does it just add each month up and divide it by
- 22 the total?
- 23 A The total amount of shifts that they work and compare them
- 24 with the shifts that they work.
- 25 Q So, like the daily productivity, this only compares the

- 1 driver to other drivers on his shift?
- 2 A Right.
- 3 Q And then similar to the daily productivity, this is broken
- 4 down by --
- 5 A Shift --
- 6 Q -- other shifts, and the same thing, comparison within
- 7 their shift?
- 8 A Yes.
- 9 Q All right. Now, is this the document that you look at
- 10 when you are trying to figure out -- when we are talking about
- 11 accidents, you said there were other factors that come into
- 12 play, and one of them I think you said was productivity.
- 13 A Yes.
- 14 Q Is this the document you go to to get the productivity
- 15 numbers?
- 16 A That is correct.
- 17 Q Okay, one of the -- is there another document that you
- 18 would look at --
- 19 A I would look at the daily ranking report, too.
- 20 Q So when you are making a determination decision?
- 21 A Well, I would probably look at this one more than the
- 22 daily ranking.
- 23 Q Okay, and is that because it gives you a bigger picture of
- 24 the --
- 25 A Exactly.

- 1 [Long pause]
- 2 Q So when a driver has like, say, minus 50, does that -- as
- 3 the monthly average, that means that he is 50 percent below the
- 4 average book for the month?
- 5 A Minus 50?
- 6 Q Yes.
- 7 A In this one -- no, it is minus, not a plus.
- 8 Q So, if he is below book by 50 percent, would the number
- 9 that would represent that be a minus 50 below book?
- 10 A No, this is percentage. I couldn't translate that to
- 11 dollars.
- 12 Q Okay.
- 13 A This works a little bit different than the other one.
- 14 Q Okay.
- 15 A I am not very good at math, but the way that this is done
- 16 is -- remember I told you on the other one that we go minus 80?
- 17 Q Yes.
- 18 A That is \$80.00.
- 19 Q Okay.
- 20 A On this one, someone who is minus 80 is really bad.
- 21 Q Would that mean minus \$80.00 or minus 80 percent?
- 22 A Minus 80 percent.
- 23 Q Okay. Now, that is what I am trying to figure out. What
- 24 does that minus 80 percent mean?
- 25 A On this one?

- 1 0 Yes.
- 2 A Usually depends on the shift. I take into consideration
- 3 on the shift. On the regular shift, which you would see first
- 4 which is day shift, sometimes, you know, a guy who is doing
- 5 minus 25 and down, I don't consider that bad, but anything over
- 6 minus 25, minus 25 percent or 26 or -- that is becoming bad
- 7 already.
- 8 It is a different way to look at things.
- 9 Q So, when we are looking at these for a percentage for a
- 10 month, so if the average book for the shift for that month was
- 11 say, \$10,000, if this driver's book was only \$5,000, would that
- 12 be a minus 50?
- 13 A Yes.
- 14 Q Okay.
- 15 A Percentage.
- 16 Q And that is how you figure the percent, based on the
- 17 average book for the whole month?
- 18 A For the whole days that he work in that month. In other
- 19 words, if he worked eighteen shifts, and every day that he
- 20 worked, he was minus 50, that means he will be minus 50
- 21 percentage also, or maybe more than that. I think it is 80 --
- 22 minus 80, I think it is. It doesn't go with the amount of
- 23 money of the booking. It goes with what people, compared to
- 24 the other driver.
- 25 Q Okay, and it will still end up being a percentage though,

- 1 based on --
- 2 A A really high percentage, yeah.
- 3 Q Okay. So, if you have seen a driver -- and I am just
- 4 using 50 as an easy number.
- 5 A Okay.
- 6 Q Okay, so you would expect to see low book warning issued
- 7 to that driver if he was minus 50 percent, for the monthly
- 8 average?
- 9 A If I see a driver who was minus 50 for certain months,
- 10 prior to this change that we did, I used to have my supervisor
- 11 give them low book letters every day. I changed that now and I
- 12 leave it as a monthly thing, so I can only issue one written
- 13 warning, and that is what I am trying to do, for all of the
- 14 days in the month that they are low.
- 15 Q Now, you said that is what you switched over doing. How
- 16 long have you been doing that?
- 17 A Probably January, February, somewhere around there. We
- 18 have done so many changes, I can't remember exactly.
- 19 Q So, as a result of that, the low book warnings became more
- 20 or less frequent?
- 21 A Well, we don't do it daily, so they became less frequent,
- 22 on a daily basis. But at the end of the month, the guy was
- 23 low-booked ten times of the eighteen shifts that he worked, he
- 24 would have ten dates written on his written warning.
- 25 Q Okay, so it would be similar to the warnings we had looked

- 1 at earlier where it had multiple dates?
- 2 A Yes.
- 3 Q Okay, so when is a driver who is terminated taken off of
- 4 these sheets?
- 5 A When he is terminated? The -- he will appear -- the last
- 6 month, if he worked any shifts -- say if he was terminated this
- 7 month, in September, he will show for the month of September,
- 8 yes.
- 9 Q Okay. And do you know which shift Abiy Amede would have
- 10 shown up, say for April of 2012?
- 11 A I think he was 12:00 to 12:00.
- 12 Q The reason I asked is that I just looked through and I did
- 13 not see his name.
- 14 A Maybe -- it should be there, because if he was --
- 15 [Long pause]
- 16 A He was shown in March.
- 17 Q So you couldn't find him in April either?
- 18 A No.
- 19 Q Okay, I see him in March.
- 20 A Yeah.
- JUDGE POLLACK: Okay, where in March?
- 22 MR. SMITH: I am looking at General Counsel's Exhibit No.
- 23 82. I am looking at -- unfortunately the page numbers were cut
- 24 off.
- 25 THE WITNESS: It is on the last two pages of General

- 1 Counsel's Exhibit No. 82.
- JUDGE POLLACK: Thank you.
- 3 THE WITNESS: Three pages.
- 4 MR. SMITH: I am looking at the ninth page where it says
- 5 "Night Shift."
- 6 THE WITNESS: Oh, that one?
- 7 MR. SMITH: Yeah.
- 8 JUDGE POLLACK: Okay.
- 9 Q BY MR. SMITH: So, for Amede, and that is about two-thirds
- 10 of the page down, and just let me know when you -- it is on a
- 11 page that starts with Smith, Michael G.
- 12 A Yeah.
- 13 Q All right.
- 14 A You say "Night Shift?"
- 15 O Yes.
- So, Amede is about two-thirds of the way down, and it says
- 17 his total shift --
- JUDGE POLLACK: Wait a minute. I'm sorry, where are you
- 19 talking about?
- 20 MR. SMITH: Look for the page that starts with Michael
- 21 Smith at the top. It is about the ninth page in.
- 22 [Long pause]
- 23 MR. WINKLER: Okay, I see him on the third to the last
- 24 page but --
- 25 THE WITNESS: If you --

- 1 [Long pause]
- 2 JUDGE POLLACK: Thank you.
- 3 Q BY MR. SMITH: So, where I am looking at Amede, it shows
- 4 total -- "TOT SHF." Is that total shifts that he would have
- 5 worked?
- 6 A Correct.
- 7 Q So it shows that he worked five -- what does that number
- 8 represent?
- 9 A It shows five shifts.
- 10 Q And then it says the weighted average is 60.
- 11 A That is correct.
- 12 Q What does that number mean?
- 13 A That is a good number.
- 14 Q Okay, so he had good productivity according to this for
- 15 his weighted average?
- 16 A According to this, it has got nothing to do with his
- 17 productivity, because this is night shift, and this is days
- 18 extra that he worked on a different shift.
- 19 So, his productivity is not based on nights. If you flip
- 20 to your last page, where it says 12:00 to 12:00, right next to
- 21 him, it says "MP." That determines the driver's shift. He is
- 22 not a night-shift driver. He is an MP driver, which got a
- 23 [indiscernible] shift, and that is his real average.
- 24 The other five shifts that you see is just if he worked
- 25 extra ones to make some extra money, and he was put in any

- 1 shift.
- 2 Q And I am trying to find out where it was that you were
- 3 talking about, where his name --
- 4 A Amede -- last third page.
- 5 Q Okay, so this night shift, that 12:00 to 12:00, you are
- 6 saying that is his normal shift?
- 7 A That is correct.
- 8 Q Okay.
- 9 A That is his real average.
- 10 JUDGE POLLACK: Minus 1?
- MR. SMITH: Minus 1, and he was minus 51 in February, and
- 12 minus 56 in March.
- 13 Q BY MR. SMITH: So then, any productivity warnings that he
- 14 received, low book, should have been, on average, 56 percent
- 15 below --
- 16 A Yeah, pretty bad.
- 17 MR. SMITH: Your Honor, I would like to offer General
- 18 Counsel's Exhibit No. 80 through 86.
- 19 MR. WINKLER: No objection.
- JUDGE POLLACK: All right, General Counsel's Exhibit No.
- 21 80 through 86 are received.
- 22 (General Counsel's Exhibit No. 80 through No. 86, received into
- 23 evidence.)
- MR. SMITH: And, Your Honor, if I can have a few moments
- 25 off the record, I believe that I am -- I want a few minutes to

- 1 consider, but I believe that I will be done with this witness,
- 2 if I could?
- JUDGE POLLACK: Off the record, please.
- 4 [Off the record]
- 5 JUDGE POLLACK: Back on the record, please.
- 6 Q BY MR. SMITH: Now, Mr. Pino, I have passed out what is
- 7 marked as General Counsel's Exhibit No. 71(a) through 71(g),
- 8 and these are representative of low-book statements; is that
- 9 correct?
- 10 A Yes.
- 11 (General Counsel's Exhibit No. 71(a) through 70(g), marked for
- 12 identification.)
- 13 Q BY MR. SMITH: Now, when I am looking at General Counsel's
- 14 Exhibit No. 71(a), and this is the one dated March 10th, when
- 15 it says "Date of Incident," would that be the date of the shift
- 16 that he worked where he got the low book?
- 17 A That is correct.
- 18 Q Now when it says below average is \$93.15, that is because
- 19 it is more than \$80.00, that is why he received the low-book
- 20 warning for that day; is that correct?
- 21 A That is correct.
- 22 Q But now when this is figured in for the monthly average,
- 23 it would be basically \$93.15 -- the percentage that \$93.00 is
- 24 of the \$481.00; is that right?
- 25 A I will think so, yes.

- 1 Q Because I think if I understood it right, you take the
- 2 company -- the average for the shift which is in this case,
- 3 would be \$481.75; is that right?
- 4 A Well, that is the average for his -- it says "Company
- 5 Average" is for that shift.
- 6 Q Okay, so just for that shift --
- 7 A Yeah.
- 8 Q -- that was the average?
- 9 A Correct.
- 10 Q So then he was \$93.15 below that average?
- 11 A That is correct.
- 12 Q And understanding that -- not trying to do math, but this
- is not 50 percent below book, based on these numbers.
- 14 A I couldn't really tell you -- to convert this into
- 15 percentage, fifty percent is --
- 16 Q Well, let me --
- 17 A Well, I am not really good at math, but if the average was
- 18 \$485 -- let's say, was \$400 and he only booked \$200, then he
- 19 would have been 50 percent below.
- 20 Q Okay, so based on these numbers, about -- \$481, about half
- 21 of that would be about \$240.
- 22 A Correct.
- 23 Q So if his book was around \$240, he would have been fifty
- 24 percent below?
- 25 A However you want to figure that.

- 1 Q Okay. So, then looking at (b), and I think we have got
- 2 the same thing, it is February 28th, and we are looking at the
- 3 average \$397.85, so almost \$400.00. If he was 50 percent below
- 4 book, his book would be down around \$200.00; is that correct?
- 5 A That's correct.
- 6 Q Okay. And then, 71(c), and I believe the rest of the
- 7 documents are the same thing, just low-book warnings; is that
- 8 correct?
- 9 A Correct.
- 10 Q Now, have you ever fired anybody for low-book alone?
- 11 A Yes.
- 12 Q When -- do you remember when the last time was that you
- 13 fired somebody just for being low book?
- 14 A This week.
- 15 Q Okay, and how often does that happen that you fire
- 16 somebody for --
- 17 A Almost every week.
- 18 Q Okay, and when you say that, is it just for low book with
- 19 nothing else?
- 20 A Nothing else.
- 21 Q And I -- I believe you mentioned that you had switched to
- 22 a system where you would wait and issue a low book for several
- 23 dates at a time. Was that right?
- 24 A Yes. Too much paperwork. As you can see --
- 25 Q And that is what I am looking at. I believe from your

- 1 testimony earlier, that these low-book warnings would have been
- 2 issued after you made that change.
- 3 A Well, I was just assuming.
- I can't remember exactly when this was done by -- I can
- 5 tell you exactly, by my -- [indiscernible] which is one of the
- 6 supervisor, and he did this in March, so maybe -- I wanted to
- 7 try to do it monthly, and I have been trying to do that for a
- 8 couple of months already, so you would know that they were
- 9 after the fact that I wanted to change my procedure.
- 10 MR. SMITH: And, Your Honor, I would like to offer General
- 11 Counsel's Exhibit No. 71(a) through (g).
- MR. WINKLER: No objection.
- 13 JUDGE POLLACK: Okay, General Counsel's Exhibit No. 71(a)
- 14 through (g) are received.
- 15 (General Counsel's Exhibit No. 71(a) through 71(g), received
- 16 into evidence.)
- 17 MR. SMITH: Thank you, Your Honor.
- 18 And, with that, I have no further questions for this
- 19 witness, Your Honor.
- 20 MR. WINKLER: I will wait until I get to my chief.
- 21 JUDGE POLLACK: Okay. That is all for now.
- 22 THE WITNESS: Okay.
- JUDGE POLLACK: You will be back.
- 24 THE WITNESS: Okay.
- MR. SMITH: And, Your Honor, if I could have a moment, I

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- 1 will go and grab our next witness.
- JUDGE POLLACK: All right, off the record, please.
- 3 [Off the record]
- JUDGE POLLACK: Back on the record, please.
- 5 Please give us your name and address for the record.
- 6 THE WITNESS: My Abiy Amede. My address is 5388
- 7 [indiscernible] Drive, Apartment 349.
- 8 MR. SMITH: I am going to ask you to speak up when you
- 9 talk to us --
- 10 THE WITNESS: Okay.
- 11 MR. SMITH: -- so the Court Reporter can hear you.
- 12 THE WITNESS: Okay.
- 13 Whereupon,
- 14 ABIY AMEDE,
- 15 having been sworn, was called as a witness herein, and was
- 16 examined and testified, as follows:
- 17 DIRECT EXAMINATION
- 18 Q BY MR. SMITH: Mr. Amede, where -- where are you working
- 19 now?
- 20 A I am unemployed. I cannot work anywhere.
- 21 Q And where did you work before?
- 22 A I used to drive a cab for different companies.
- 23 Q And what was the last company you worked for?
- 24 A Nellis.
- 25 Q And what did you do there?

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- 1 A Driving a cab. I transported people.
- 2 Q And how long did you work for Nellis Cab?
- 3 A About three years.
- 4 Q Do you remember when the date was that you started?
- 5 A Around -- I think it was in February of 2009.
- 6 Q And when did you stop working for Nellis?
- 7 A My last day was April 20th, 2012.
- 8 Q Did you take part in a long break earlier this year?
- 9 A Yes.
- 10 Q When was that?
- 11 A It was, I think one day before the Super Bowl, on
- 12 Saturday.
- 13 Q And what was that long break about?
- 14 A It was all about our income, and it was like from
- 15 different companies, a lot of drivers for all the -- fourteen
- 16 or sixteen different companies, and they were all cab drivers,
- 17 and so we got together and we talked about our incomes and to
- 18 not get more cabs on the streets because of our income is going
- 19 lower and lower every time. We can't even feed our
- 20 families and pay bills, and a lot of stuff, so we need to talk
- 21 about that and make some decisions for better things to solve
- 22 that problem.
- 23 Q And how -- how did this come about?
- 24 A They were like the first -- I think the airport or
- 25 everywhere where there were flyers, things that were to happen

- 1 on that day, so everybody talk about before that, and we texted
- 2 each other, the drivers, so like all cab companies, drivers,
- 3 got to talking and making that day to happen.
- 4 Q Okay, so how did you find out about it?
- 5 A Yeah, I see a lot of friends in the airports, and some of
- 6 my friends texting me, and -- and some hotels like the
- 7 Bellagio, like Wynn or Encore, they got underneath and a cab
- 8 can wait out there, so everybody was posting their flyers out
- 9 there, and when we try to go to the airport also, everybody --
- 10 everyone see the flyers for that day.
- 11 Q For the day -- when you are talking about -- what do you
- 12 mean when you talk about for that day?
- 13 A For that day, like for the Saturday, the one day before
- 14 the Super Bowl, everybody have to take a long break, and got
- 15 them together -- like they were at different places and that
- 16 day, so there wasn't any specific place for us, but after that,
- 17 everybody spoke each other -- we been here -- everybody is
- 18 there, like at different places, but [indiscernible] guys with
- 19 the big parking spaces, on the street, because if we go to
- 20 other places, then we don't have any places. But on that day,
- 21 everybody is --
- 22 Q I am not trying to get to the break yet, and I think that
- 23 is where you were going.
- 24 A Yeah.
- 25 Q So when you worked at Nellis, how did you get paid?

- 1 A We split our fares.
- 2 Q And how did that work?
- 3 A That worked first when I get hired, that was work like
- 4 fifty-fifty, so before -- after fifty, we pay fifty percent for
- 5 the gas and we used to charge 75 cents per ride, for a trip
- 6 charge. But after a while, it was changed, then, because when
- 7 I start out there, we used to get a pay every day with a car,
- 8 so we do our [indiscernible], we have our money, and we draw
- 9 for the company's money.
- 10 But after that, they change it. That is not the way to
- 11 pay staff.
- 12 Then, after that, I don't know how much I get paid
- 13 exactly, and how much I pay for a cab, or for a trip charge.
- 14 don't have any idea. On the pay stub, it don't say anything
- 15 about that, too.
- 16 Q Do you remember when that changed?
- 17 A Not exactly.
- 18 Q And did you -- what did you do to find out how you got
- 19 paid?
- 20 A I tried to ask my supervisors. I think the last time I
- 21 asked was like about -- the last time I was taking a safety
- 22 meeting because we got about every three or four months, we
- 23 have safety meeting, and that safety meeting was given by our
- 24 Manager, [indiscernible]. If he was not there, there was a
- 25 Larry in -- I forget his name.

- 1 So the last time, when the driver was asking how much we
- 2 get paid and how much we pay for the gas and for the trip
- 3 charge, and he explain it as he didn't know. He is a
- 4 supervisor but he didn't know how much we were paid, and he
- 5 told us the owner and I think the accountant, he say, the only
- 6 man who know how much who know how much we pay for the gas and
- 7 for the trip charge.
- 8 Q And when you said "he couldn't explain," who is he?
- 9 A Larry.
- 10 Q Larry?
- 11 A Yeah, his name is Larry.
- 12 Q And do you remember about when this meeting was?
- 13 A Not now, but that was the last safety meeting, so it was
- 14 early this year.
- 15 Q So, for the day of the long break, tell me what you did.
- 16 A Well, on the long break, I take the break with several
- 17 drivers, my friends, and went to Ethiopia restaurant, that was
- 18 the location --
- 19 Q Well, let me pause you there. Do you remember what you
- 20 did -- what you were doing before you went on this break?
- 21 A Before I went on this break, I think, I get riders, taking
- 22 them around, taking them a ride. Like I work like exactly what
- 23 I do other days. Take a ride and drop and take a ride and
- 24 drop, and yeah, I pick -- I get some calls from my drivers, in-
- 25 house, called by them, have to go there, before they arrive.

- 1 Q So from what you -- you said you were giving rides. So,
- 2 from your last ride, if you can walk me through what you did
- 3 for this long break.
- 4 A Okay. After I drove my customer, I went to Ethopia
- 5 restaurant out there. Am I clear?
- 6 Q Yes, and please continue.
- 7 A Okay, so I went there, and I stopped. And by the time I
- 8 got there, it was about twenty or thirty drivers right there.
- 9 So, we tried to get some places to order and get in, and we
- 10 started talking and discuss about the cabs [indiscernible] and
- 11 about our payment and a lot of major problems with the cab
- 12 industry. And about thirty or forty minutes ago, everybody is
- 13 starting to comment on that area. So whatever I know, a
- 14 driver, I try to explain and we all tried to join together for
- 15 a solution or any concern things they know about which one is
- 16 wrong and which one have to get fixed, or that kind of stuff.
- 17 So by the time -- there was say, channels -- broadcasting
- 18 going to be there, so everybody is coming there, so I try to go
- 19 outside because the restaurant is too small for us, because it
- 20 is all over from one company. So they take [indiscernible] to
- 21 the parking lots, and we gather out there. I thought my own
- 22 opinion, to try to explain what I think, and what should we do,
- 23 and the others also, so we try to explain to each other, and
- 24 after that, we didn't make any decision yet, but still, we all
- 25 gathering together and talking about the problems, the

- 1 solution, and that kind of stuff.
- 2 Q Let me interrupt you for just a moment.
- 3 A Okay.
- 4 Q When you said -- there are two things. You said everybody
- 5 started coming. I think you said you had been there for
- 6 several minutes. What do you mean by "everybody started
- 7 coming?"
- 8 A When we were there, friends would arrive, there were about
- 9 twenty or thirty drivers, we were there, by the time we
- 10 arrived, and it was a lot of drivers also, try to continuously
- 11 come up there for that.
- 12 Q How do you know that they were drivers?
- 13 A Most of them, I know them, when I see them. In other
- 14 words, when I go outside a lot of cabs, and they coming from
- 15 the cabs.
- 16 Q Now, you mean, to say a lot of cabs, what are you talking
- 17 about?
- 18 A Oh, talking about, maybe I can see right there, maybe 200,
- 19 maybe more cabs.
- 20 Q And were they -- what cab companies were they from?
- 21 A They were from all over, from all companies.
- 22 O And you said that you went outside and I think you said
- 23 you were trying to explain, who -- who were you trying to
- 24 explain to?
- 25 A All of the drivers, like -- there was [indiscernible]

- 1 lead, to set up things, so we just come together and like a
- 2 group. So, maybe six or seven people together and we discuss
- 3 about that, so I try to explain my opinion, and I saw -- and
- 4 the other one is the same thing, so after that, we -- everybody
- 5 is gathering together. But first, it would be like little
- 6 groups, because like, we need someone lead us.
- 7 So I think I remember -- I forget his name. He is for the
- 8 Yellow Cab drivers. He is the one guy he starting gather
- 9 everybody together, because the news from broadcasting is
- 10 coming. They need all kind of stuff from us, so they interview
- 11 all the drivers out there, specific drivers, and they know what
- 12 happened and know what this thing is about.
- 13 Q When you said they interviewed the drivers, who is they?
- 14 A Channel 13.
- 15 Q How long were you at -- and what is the name of the
- 16 restaurant that you were at, if you know?
- 17 A Moscara. [Phonetic]
- 18 Q And how long were you at the restaurant, if you remember?
- 19 A Inside the restaurant, I believe maybe thirty or forty
- 20 minutes, but outside, total inside and outside, maybe two
- 21 hours, maybe more.
- 22 O So, after you went outside, and I think you said you were
- 23 talking to other people, what happened after that?
- 24 A So after that, like I said the broadcasting was coming out
- 25 there, so the drivers, two or three drivers, they tried to lead

- 1 and speak up more, and what happened and what we should do, and
- 2 they -- that takes more places and like more time to explain
- 3 everybody -- and drivers were also asking each other questions,
- 4 and the other driver give an answer.
- 5 So, after we do that, they say, we have continue these
- 6 things to me, and put some union, because if we are all going
- 7 to act together, we can't like ask our questions, like exactly,
- 8 and we get an answer also right away. So they have to get it
- 9 together, make some union, or some type of -- for driver's
- 10 stuff, like -- concerning about the drivers' all things, but we
- 11 need to more get a power. If we get together, we get a power
- 12 to ask -- to solve their problems. So that was a main point
- 13 that days, was started.
- 14 Q So what happened after you -- while you were at the
- 15 restaurant? What happened after that day?
- 16 A Well, on that day, after like I say -- like say four
- 17 people leading up there, so they say, "Okay, let's start from
- 18 here, and make an appointment for next day."
- 19 Q I'm sorry, I didn't understand what you said.
- 20 A Yeah, they say, we should also get together for next day,
- 21 tomorrow. I mean, on Sunday, the next day.
- 22 Q Okay.
- 23 A That was a Saturday.
- 24 Q And we would meet here together we need more news coverage
- 25 out here, and if we can, we try to elect some three or four

- 1 people to lead that union and things, and after that, we try to
- 2 -- and they say we have to drive straight to Paradise, to
- 3 Sahara, and after that, we will make a left on Sahara and take
- 4 Las Vegas Boulevard and go all the way to Las Vegas driving on
- 5 one lane or two lanes, both lanes, we take them, and we
- 6 marching all the way. Some drivers they are honking. And some
- 7 put hazard -- lighters, like blinking lighters, and we drive
- 8 all the way down to the Mandalay Bay.
- 9 Q And so, when you said "we," "we did this," you -- you did
- 10 this?
- 11 A Yeah, I did.
- 12 Q Now, how many people were doing this, if you --
- 13 A I can't remember because all around there, there is -- and
- 14 everybody is joining in, as well, the drivers. It is too many.
- 15 Q And what -- what companies were doing this?
- 16 A Oh, all of the companies, all drivers from all different
- 17 companies.
- 18 Q And when you look at a cab in Las Vegas, how do you know
- 19 that this cab is one company versus another company?
- 20 A Oh, they got different colors and different name on it.
- 21 All cab has a logo on it.
- 22 Q So, you -- you went to Las Vegas Boulevard. I know you
- 23 said you were told to drive down Las Vegas Boulevard to
- 24 Mandalay Bay.
- 25 A Yeah.

- 1 Q But aside from the fact of what you were told to do, what
- 2 did you do?
- 3 A Myself?
- 4 Q Yes.
- 5 A Oh, I drive out there, by the lot. I stop right there,
- 6 right? That is what I need to explain?
- 7 Q Well, I am just trying to look at what -- I know you said
- 8 what you were told to do, but I am just trying to figure out
- 9 what you actually did.
- 10 A I did?
- 11 Q Yes.
- 12 A Okay, yeah, when we done out there, I just drive straight
- 13 to [indiscernible]. I just take Swanson, so I take a left, and
- 14 I make a left -- a right turn, and a left turn on
- 15 [indiscernible] on -- Paradise, and at Paradise I make a right,
- 16 so I followed everybody marching.
- 17 So I drive all the way to Paradise and Sahara, and on
- 18 Sahara, I make a left, and when I get on Las Vegas Boulevard,
- 19 another left, and I drive all the way down to Mandalay Bay.
- 20 Q Okay. Now, when you got down to Mandalay Bay --
- 21 A Yes.
- 22 Q -- what did you do?
- 23 A After that, I just jump on I-15 and drive to get a ride to
- 24 downtown.
- 25 Q And so what happened for the rest of your shift? What did

- 1 you do?
- 2 A Okay, I go downtown, I think, to downtown, drop the ride,
- 3 and I did on that day all of my stops, so it was -- yeah, I did
- 4 three or four already, five rides after that, so by the time I
- 5 get five rides, my time is almost done, so I go gas up my cab
- 6 and I go all the way to the company. And by the time I reach
- 7 the company and I made my supervisor. His name is August.
- 8 Q Did you say August?
- 9 A August, yes.
- 10 Q Okay. So you got there. You took your cab back. What
- 11 happened?
- 12 A Yeah, I got there, and he called me and he told me, I
- 13 think within an hour break, so I have to go back -- "Don't come
- 14 back to work and give us a call Monday."
- 15 O So --
- 16 A Yeah, he give me a paper and I showed him my trip sheet
- 17 and get back to there, and I turn in my money and I go back to
- 18 my house. By the time I get there, I meet some drivers from a
- 19 different shift, because they called early before they done
- 20 their shifts, so I turn my stuff in up there and we are all
- 21 down there, and on the way, we started talking about what
- 22 happened and what it did.
- 23 Q When you say they called early, are you saying they called
- 24 you early or what --
- 25 A No, no, the other drivers. Mine is a 12:00 to 12:00

- 1 shift, so I didn't get any early call, but the other drivers
- 2 who are driving for 2:00 to 2:00 shift, 3:00 to 3:00 shift, is
- 3 all different drivers, they called -- the supervisor called
- 4 them early and they send them home.
- 5 So, by the time I get there, I met from different shift
- 6 assignments, several drivers.
- 7 So I like -- I don't know what happened, but they all from
- 8 Ethiopians. Go all the same rates.
- 9 Q Who -- who is all Ethiopians?
- 10 A All of the suspended, they called peoples right there.
- 11 Q Okay. And did you know each of the drivers that were
- 12 suspended?
- 13 A Yes.
- 14 Q So that was the end of your shift. What happened next?
- 15 A The next that happened, okay, the next day is Sunday, so
- 16 -- on Sundays, I tried to contact every driver, was back to the
- 17 yard and sent home, about seventeen drives, including me. So,
- 18 I tried -- some of them I have phone numbers and some of them I
- 19 don't have it, so I tried to call friends and every day, grab
- 20 their phone numbers, and everybody say we need to get together,
- 21 all of us, and so early Monday, we met at some local retail --
- 22 Starbucks, I think, at Tropicana and Decatur, some restaurants
- 23 out there, and we see and we start talking about what happened,
- 24 what we should do, and everybody say -- everybody who is
- 25 [indiscernible] "Call Monday, call Monday."

- Okay, then some drives, I think they talk about getting a
- 2 union at Ellis Cab, because if we have a union, we can ask
- 3 anything of the company, without scaring, without any problem,
- 4 you know, so we need to be together and we need a union at our
- 5 company.
- So, we discussed about that. After that we went to the
- 7 Company around 11:00, so by the time we get there, we made --
- 8 also had a supervisor, we went outside, and she said, "Yeah" --
- 9 Q What happened when you got there and --
- 10 A Yeah, he told us, everybody is together and try to go to
- 11 the office, and he say, "You know, no, you guys told to call,
- 12 not to come, so you have to go back."
- 13 Q So what happened after that?
- 14 A And after that, so we go back and I get called about 1:00
- 15 from -- about -- from -- no, it is early. I get called from my
- 16 supervisor [indiscernible] 1:00 in the company.
- 17 Q So where were you at when this call came in?
- 18 A The call came in as I am on my way -- yeah, I am on my way
- 19 to home.
- 20 Q Okay. So you got this call.
- 21 A Yes.
- 22 Q What happened next?
- 23 A And I get back home, and so when I get back home I tried
- 24 to call some other drivers to see if anyone received any call,
- 25 so I am -- call my friend to see if he received a call, and he

- 1 got a call and he got an appointment for 2:00 and the rest say
- 2 they didn't get any calls. Some of them though they do.
- But 1:00 is my appointment, so at 1:00 p.m. in the
- 4 afternoon on Monday, I arrive at the company, and I speak for
- 5 my dispatcher, looking for a supervisor, and he called
- 6 supervisor Osmel his side, and he came and he took me inside in
- 7 the office --
- 8 Q When you said he came and took you inside the office, who
- 9 are you talking about?
- 10 A Osmel, the supervisor, Osmel.
- 11 Q Okay.
- 12 A He got me and took me inside. So by the time I get there
- 13 and Jaime and other [indiscernible] were there, so I sit out
- 14 there, and also some lady and I didn't even remember her name
- 15 or have ever seen here. She was also calling out there, and I
- 16 get there and my -- Jaime asking me why I should take more than
- 17 an hour break, and I told him for like all of the drivers
- 18 getting that break, because of no getting more medallions and
- 19 more cabs on the street, okay, and he told me,
- 20 [inaudible/indiscernible voice trailed off] I said "Yes."
- 21 After that he ask me, "Who is the lead of the -- this
- 22 protest," and I said, "I don't know," because I don't even know
- 23 who was the leader on that day, and after that he asking me how
- 24 long I worked there at the Company, and I said about three
- 25 years. He told me, "yeah, do I receive a Christmas bonus," and

- 1 I said, "Yes." And he asked me how much I get. I say, "About
- 2 300-something," and he said, "The Yellow Cab drivers got a
- 3 hundred dollars," and I say, "No, no. I know some drivers they
- 4 get more money than a hundred dollars." And after that, Jaime
- 5 give me a paper to sign on it. He says if I get a -- if I did
- 6 it again, if I take more than an hour break again, I will get
- 7 suspended or I will get fired, so he give me a paper to sign
- 8 it.
- 9 So I sign on it, and then after that, I think Ray asked
- 10 Jaime, did he give us a copy for the drivers, and Jaime say he
- 11 never give any copy for drivers. That is alone for the
- 12 Company.
- 13 Q So what happened after that?
- 14 A Then they asked about myself, did I get any copy of this,
- 15 and Jaime said no. After that, I went back.
- 16 Q So you said that Ray Chenoweth said that Yellow Cab got a
- 17 hundred dollars?
- 18 A A hundred dollars Christmas bonus.
- 19 Q Is Yellow Cab, are they union or non-union?
- 20 A Union.
- 21 Q Now, other than the organized -- the long break on Super
- 22 Bowl Weekend, have you taken long breaks during your shift?
- 23 A Before that?
- 24 Q Yes.
- 25 A Yes, some days, I do.

- 1 Q So tell me about your breaks.
- 2 A Sometimes, I go home. I got a little kid, and little kids
- 3 get sick sometimes, so I want to go home and I stay there for
- 4 maybe two hours or so, but not continuously, sometimes I did
- 5 that, and sometimes I didn't take any break, and so -- but most
- 6 of them, like, I will take a break when it gets slowed down or
- 7 something. I need more than an hour break and then get back to
- 8 work.
- 9 Q Okay, so sometimes it was more than an hour, and did you
- 10 say that sometimes it was less than an hour, or did you say --
- 11 A Some days less than an hour and some days I wouldn't even
- 12 take any breaks.
- 13 Q Well, aren't you required -- what does Nellis require as
- 14 far as breaks?
- 15 A Yeah, we have to -- it is mandatory to take a one-hour
- 16 break.
- 17 Q Now, did you get in trouble on the days when you didn't
- 18 take your break?
- 19 A No.
- 20 O Did you get in trouble -- well, what kind of trouble did
- 21 you get in on the days when you took a long break?
- 22 A I didn't get any.
- 23 Q On the days that you took a long break, what would you
- 24 write on your trip sheet?
- 25 A I didn't write anything. Like, an hour break? I would

- 1 just write it down, I just write it down on my trips, all of
- 2 the time, but I am not sure I write it down at that point of
- 3 time.
- 4 Q Now, on the days that you took long breaks, what kind of
- 5 low productivity discipline would you get, if anything?
- 6 A On that day?
- 7 Q Not on any particular day, but -- let me start with, did
- 8 you ever get low productivity for taking a long break, or on a
- 9 day that you took a long break?
- 10 A Some days, not. Most of them, I didn't get it because I
- 11 try to -- like when I take a long break, when I go outside, I
- 12 try to get a -- I try to work more. Like I grab a ride is peak
- 13 flags and take more radio calls. So on that day, my average is
- 14 going to be better, so I didn't get called on anything.
- But I get more local kind of paper from company.
- 16 Q So, some days -- I think you said some days you didn't get
- 17 productivity --
- 18 A Yeah, not because of like I take more than an hour break.
- 19 Maybe I get one or two days without one but the rest is -- when
- 20 I took my more than an hour break, I try to get more radio
- 21 calls and get more riders, and some days I pick some flags on
- 22 the street.
- 23 Q Now, what do you man "flags?"
- 24 A Well, we are not allowed to pick up any flags on the
- 25 street.

- 1 Q But what is a flag?
- 2 A A flag mean like someone flag you on the street, on the
- 3 side of the street, from a shop, or anything.
- 4 Q So, how is that different?
- 5 A Like -- okay, let's say if maybe I start on the cab line
- 6 for the hotels, so everybody is -- maybe I am the last guy, and
- 7 so we call -- we try to pick up by the line we get there. The
- 8 first cab taken, the second one, that is the way we work.
- 9 So, if I say I am the last one in line at hotel, is the
- 10 line too long, I go around and pass the hotel. By the time I
- 11 exit the hotel, maybe I get some people walking on Las Vegas or
- 12 maybe the hotel side. They walking around the other side. So
- 13 they flag me, so I pick them and I get them to destination.
- 14 Q Now, are you supposed to pick up people flagging rides
- 15 like that?
- 16 A No.
- 17 Q Do you ever -- how many times did you get in trouble for
- 18 flagging rides?
- 19 A I get from the TA two or some times.
- 20 Q What did you get from the TA?
- 21 A A ticket.
- 22 Q Okay.
- 23 A Because of getting flags from the street.
- Q Okay, so when you get a ticket like that, do you report
- 25 that to Nellis?

- 1 A No, I don't have -- because I pay it by myself.
- 2 Q Okay. Does the -- do you know if he TA reports tickets
- 3 that you get?
- 4 A No, nothing -- I don't know about that.
- 5 Q What did you hear from Nellis, if anything, about these
- 6 tickets?
- 7 A Oh, nothing. Because any tickets is handled by a driver.
- 8 Q So, you said you take more radio calls. Why would you
- 9 take more radio calls?
- 10 A If I take more than a two hours or more than that break,
- 11 so I try to -- if there was a longer gap, like if I get more
- 12 radio calls, that gap helps get closed, that gap, because when
- 13 I go back to the yard, we have every day, a book coverage, and
- 14 we have to be done that day, so if we didn't get that money,
- 15 that mean we have to sign for low book, but if we did that
- 16 continuously, we get fired because of that.
- 17 So, everybody don't want to get fired, so we have to get
- 18 the things right to get the money up.
- 19 Q So, have you received low book before?
- 20 A Yes.
- 21 O And do you know when it is that you get low book?
- 22 A I don't know specific dates, no.
- 23 Q Not dates, but do you know the amount that triggers low
- 24 book?
- 25 A No, I haven't -- I can't say, but some days you have like

- 1 a -- even I do my all twelve-hour shift, I might get low book
- 2 on that day, because [indiscernible] let's say I have 30 or 32
- 3 riders, so maybe 22 drivers on my shift, on my 12:00 to 12:00
- 4 shift, so that mean the day average was maybe I hand in \$400 on
- 5 that day, so the average may be \$500, but the first guy maybe
- 6 he had like 17 or 18 riders.
- 7 So, we're low ballers that mean low ball took a customer
- 8 from the airport to the tunnel and take them that way.
- 9 Otherwise, I can be right there. The next day I get fired.
- 10 So, if I work for Nellis, I have to be there.
- 11 Q You have to do what?
- 12 A Recruiting people, locals.
- 13 Q Okay.
- 14 A That is why I say, I do exactly for twelve hours, my 30
- 15 some riders, and I get back to the yard, the first guys, who is
- 16 the high booker, maybe he book \$540, he is done 18 riders. So
- 17 to compute that I work twelve hours and 32 riders, he get 18
- 18 riders, so that mean he took more low ballers than me.
- 19 Q Now, you say you got these low books.
- 20 A Yeah.
- 21 O How much time off did you get because of low book?
- 22 A I didn't get time off.
- 23 Q How many times did you get suspended for low book?
- 24 A I didn't get suspended. I just sign every day and get
- 25 warnings.

- 1 Q Was there anything other than signing the warnings had to
- 2 do for low book?
- 3 A No.
- 4 Q Now, did you participate in a union organizing drive at
- 5 Nellis?
- 6 A Yes.
- 7 Q How did you participate?
- 8 A First like a -- after the big all of the drivers meeting
- 9 and we say we need a union, because of the company got more
- 10 [indiscernible] than me like to get like high book and
- 11 everything it was doing because of the pressure. I don't want
- 12 to low ball to do it, but I have to because of feeding my
- 13 childs.
- 14 So, that means we get more pressure than -- they have some
- 15 union companies like Yellow, Frias, they are union, so they
- 16 don't have any problem with that book, but all Nellis, no, we
- 17 have to do what the company says. The company need \$500, we
- 18 have to get that money.
- But in the union companies, they don't have problem of
- 20 that and if they have any question, regarding the company, so
- 21 they go to the union and the union ask the company. Plus they
- 22 have a contract for three years, the contract, so everything is
- 23 work through the union. Three years contract, so they get
- 24 paid, whatever everything go, so the men [indiscernible] like
- 25 that, for to get a union, we have to get health care, we have

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- 1 to get paid exactly what we should. We have to know how much
- 2 we will pay for the gas. We have to know how much we paid for
- 3 the trip sheet; that kind of action.
- 4 Now, with Nellis, I have to go straight to the office.
- 5 So, that mean today, if I did it tomorrow again, I might get
- 6 fired. I don't have any like -- like -- like safest place for
- 7 me, but if I have a union, I don't have that problem.
- 8 So, we all got together, some drivers, not all, so we try
- 9 to get a union, and want the union, and talk about the union,
- 10 how can we join a union, and how can they -- what are they
- 11 going to do for us, and how was our right to do that, and they
- 12 explain everything, so after that, we join in some meetings for
- 13 the union, and let's say everybody is understanding that, and
- 14 they explain at the two or three meetings after that, so we
- 15 will send you a name for the company, and after that, we --
- 16 after that, we started organizing a union. That mean, like,
- 17 talk to drivers about the union, and explain them what the
- 18 union means, and the benefits about the unions, and also sign
- 19 cards if they ask.
- 20 Q Okay, and before I get too much farther in this, the
- 21 discipline that you received for the long break, what was it?
- 22 What did that end up being?
- 23 A Pardon me?
- 24 Q What -- were you suspended?
- 25 A For taking the long break?

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- 1 A Yes.
- 2 Q And how long were you suspended?
- 3 A Suspended two days. But different drivers got different
- 4 suspensions.
- 5 Q So when you were suspended two days, was it two days of
- 6 your regular days off, or --
- 7 A No, two days worth of my working days.
- 8 Q So did you end up signing anything for the union?
- 9 A What do you mean?
- 10 Q Did you -- did you have to sign anything for the Union?
- 11 A Yes, I did.
- 12 Q What did you sign?
- 13 A My card.
- 14 Q And what did that card -- what was that card for?
- 15 A That card is like a -- that card is like a vote that I
- 16 want -- our name is on it, and we say we need a union on it.
- 17 Q Okay. So what else did you -- I know you said you met
- 18 with the Union and you talked to other drivers. Was that the
- 19 only card that you received?
- 20 A From the Union, no. I got a different card. I received
- 21 [indiscernible] like ten drives, so they put our names and sent
- 22 them to Nellis Cab, and we all got cards back to work and the
- 23 company, we didn't talk about any union activities, but over
- 24 time, like some places in the airport, so when it gets slow, we
- 25 stop more than an hour to get a ride at the airport, so that is

- 1 a good time to spoke about -- to talk about and discuss about
- 2 the union, and some hotels also, they are slow and we have our
- 3 usual break. Also there are [indiscernible] and discuss about
- 4 the union, and sometimes when we go to the yard before our
- 5 shift or when we go out from the yard, we discuss about the
- 6 union, get the cards, and also put flyers, put around the
- 7 flyers for the drivers, and even on my day off, I go airport or
- 8 some hotels to put out the flyers for the drivers to join the
- 9 union.
- 10 Q So, where were you putting these flyers out at?
- 11 A Where I put them?
- 12 Q Yes.
- 13 A In the airport for the drivers, and some hotels also, on
- 14 my day off, and I drive by and I see any Nellis car, so I go
- 15 there and hand them the flyers.
- 16 Q Now, when you went to the airport, were you working or
- 17 were --
- 18 A No, on my day off. What I am doing -- I think like two
- 19 days before I get fired, like -- one of the days, and I went to
- 20 the airport. There were three [indiscernible] members, two of
- 21 them were union members, [indiscernible], and we stayed there
- 22 about two or three hours, so every Nellis driver coming to the
- 23 airport, we were passing out flyers and cards, and also an
- 24 emblem -- if you not hurry, we put that to him, pass them and
- 25 if he got the time, we explain to him about the union, what the

- 1 benefit, sometimes they ask questions. If they know more than
- 2 me, I can't answer his question fully, so I ask for Sam or Jim,
- 3 because the union, they explain more than that. So I did that
- 4 on my day off.
- 5 Q So --
- 6 MR. SMITH: Your Honor, can I have a moment off the
- 7 record?
- 8 JUDGE POLLACK: Off the record, please.
- 9 MR. SMITH: Thank you.
- 10 [Off the record]
- 11 JUDGE POLLACK: Back on the record, please.
- 12 Q BY MR. SMITH: I have handed you what has been marked as
- 13 General Counsel's Exhibit No. 50. It has got a 50 at the
- 14 bottom?
- 15 A Yes.
- 16 (General Counsel's Exhibit No. 50, marked for identification.)
- 17 Q BY MR. SMITH: What -- what is this that you are looking
- 18 in General Counsel's Exhibit No. 50?
- 19 A Okay, that is a card we signed to join the union.
- 20 Q And whose signature is that on there?
- 21 A That is mine.
- 22 O And do you remember, does that represent the date when you
- 23 signed it?
- 24 A Yeah.
- MR. SMITH: I would like to offer General Counsel's

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- 1 Exhibit No. 50?
- 2 MR. WINKLER: No objection.
- JUDGE POLLACK: General Counsel's Exhibit No. 50 is
- 4 received.
- 5 (General Counsel's Exhibit No. 50, received into evidence.)
- 6 MR. SMITH: Thank you, Your Honor.
- 7 Q BY MR. SMITH: And then looking at General Counsel's
- 8 Exhibit No. 51(a) and (b), have you seen this letter before?
- 9 A Yes.
- 10 (General Counsel's Exhibit No. 51(a) and 51(b), marked for
- 11 identification.)
- 12 Q BY MR. SMITH: When did you see this letter?
- 13 A I see this on April 18 at the airport.
- MR. WINKLER: I'm sorry, I didn't understand the response.
- 15 Q BY MR. SMITH: Did you say April 18th?
- 16 A Yes.
- 17 Q And how did you see this letter on April 18th?
- 18 A The union stuff, like Jim and Sam, they hand
- 19 [indiscernible] driver, because if anyone from Airport
- 20 Authority, has permission, to do flyers and to talk to drivers,
- 21 around the airport are not permitted, so we have to get
- 22 permission, so this is a paper they give us and each other for
- 23 us, so if anyone from the Airport Authority asks us, we have to
- 24 show them this one. That is the permission for us.
- 25 Q Do you know how long before this letter came out, how the

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- 1 union -- how long before this the Union had to ask for
- 2 permission?
- 3 A I am not exactly -- I think he told me seven days.
- 4 Q Who is he?
- 5 A Sam.
- 6 Q Sam is from where?
- 7 A From the union.
- 8 Q And you said you got this on April the 18th?
- 9 A Yes.
- 10 Q And what happened that day?
- 11 A That day I took this one, with flyers and cards, working
- 12 on the airport to get signed the cards.
- 13 Q And was that your day off?
- 14 A Yeah, that was my day off on Wednesday.
- MR. SMITH: Your Honor, I would like to offer General
- 16 Counsel's Exhibit No. 51(a) and (b).
- 17 MR. WINKLER: Is it one letter?
- 18 MR. SMITH: It is one letter, yes.
- 19 MR. WINKLER: Okay. No objection.
- JUDGE POLLACK: Okay, General Counsel's Exhibit No. 51 is
- 21 received.
- 22 (General Counsel's Exhibit No. 51(a) and 51(b), received into
- 23 evidence.)
- MR. SMITH: Thank you, Your Honor.
- 25 Q BY MR. SMITH: Now, you mentioned, I think you said a

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- 1 letter that named -- that had your name on it. What were you
- 2 talking about there?
- 3 A Oh, like a -- from a union, so that letter is sent to the
- 4 Nellis Cab Company, that say this driver is organizing the
- 5 union members, and then the company know we are trying to
- 6 organize a union.
- 7 Q Okay, and were -- how did you find out about this letter?
- 8 A Oh, that letter, before they send it, we were at the
- 9 union, and they show us what kind of letter they will send and
- 10 what kind of [indiscernible] and who is [indiscernible]. I
- 11 think I have a copy also.
- 12 Q But did you attend any Taxicab Authority meetings earlier
- 13 this year?
- 14 A Yeah. I attend in February.
- 15 Q And what was the meeting about?
- 16 A The meeting is about to get no more medallions on the
- 17 street, like a lot of cab companies -- not all of them, had cab
- 18 drivers, including my company, asking for more medallions and
- 19 more cab on the street, so we try to [indiscernible] and the
- 20 Taxi Authority and the Union, they call a big meeting. That
- 21 big meeting, because after long break, every Tuesday or
- 22 Sundays, all of the drivers from all of the companies, meet in
- 23 some specific place, like a different places every week. We
- 24 got together and we discuss about the cab industry.
- So, by the time of that, all of the unions, including the

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- 1 early from the different two unions and everybody, so all --
- 2 like a lot of drivers had anger and that mean, that they don't
- 3 satisfy with the jobs, so they try to come and most of the Taxi
- 4 Authority meetings is held at [indiscernible] office. They got
- 5 a little meeting room, but this one is at the Cashman Center.
- 6 That mean they expect a lot of drivers. So, I was there, so
- 7 lot of drivers from all other companies; maybe 400 or 500
- 8 drivers, so even the meeting room is packed, so some drivers
- 9 waiting outside, and lot of anger and lot of activity that day.
- 10 So, the meeting was started to get more medallions on the
- 11 street, and before they make a decision, they give the drivers
- 12 a chance to speak up about -- to speak like drivers, and then
- 13 -- for two or three or four minutes, or something.
- 14 Q So what happened with that?
- 15 A That day, I was [indiscernible] about my own and bad about
- 16 my company, and what I say is, first I explain my
- 17 [indiscernible] because some drivers before me, they mention
- 18 about long-hauling, and I also mention when I get there, the
- 19 Taxi Authority does [indiscernible] long-hauling, because of
- 20 mostly, all of the drivers, we don't need to long-hauling, but
- 21 we [indiscernible] from the company. So the Taxi Authority
- 22 know that, before that also, I am at some meetings when the
- 23 Taxi Authority would explain but nobody hear us. So this time
- 24 there is a lot of drivers, a lot of crowds, so everybody is
- 25 pushing to hear that point for the committee.

- 1 So, I explain -- the Taxicab Authority can't stop the
- 2 things, because the driver won't do it, and I explain also, a
- 3 week ago something -- I come back in the yard, was starting
- 4 with some riders, so I got some dollars, and other drivers had
- 5 the same ride, eighteen riders he had. I got 30 or 32, he got
- 6 18 riders, so he have \$540 and I have over \$400. That mean he
- 7 had long-haul and I explained that for that days, and I said my
- 8 company is asking for more medallions, that mean if he ask for
- 9 more medallions, the income is going up.
- 10 Q Now, what do you mean, "My company asked for more
- 11 medallions?"
- 12 A Nellis Cab Company.
- 13 Q How did that happen?
- 14 A Before that meeting, one of the meetings in August, I
- 15 think of last year, but I am not sure, but that days, the men
- 16 like asking for more medallions, they already making -- amore
- 17 medallions and that day my manager and [indiscernible] is
- 18 making a big point to explain about they need more medallions,
- 19 and they explain their incomes, they explain their drivers, how
- 20 they get -- they average the monies every day is good, so that
- 21 is why they explain they need more cab money. So
- 22 [indiscernible] I got to there, and I got the same thing,
- 23 because my company is still asking for more cab medallions.
- So I try to convince them, why if they get more money and
- 25 if they are asking more cabs, and they still need more money,

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- 1 and the income is going up and going up. So, if they got more
- 2 money, they have to keep our benefits. That mean, like I
- 3 explain, my healthcare.
- When I get hired at Nellis Company, three years before,
- 5 the healthcare is free. After a year ago, I start paying every
- 6 month \$70.00. And after a year ago, I start paying like
- 7 \$150.00.
- 8 Q Now, what you are telling me now is this what you were
- 9 saying --
- 10 A I was saying at that Taxi Authority meeting, yeah.
- 11 Q Okay.
- 12 A So, I explained that for them so if that happened, because
- 13 -- I asked my supervisor, why we are paying for [indiscernible]
- 14 they told us they [indiscernible], but when we got there, it
- 15 is a different story, because they need more money and to have
- 16 more cabs, and they need more things. So that is why I tried
- 17 to explain that there.
- 18 If they need more cabs, they have to keep our benefits.
- 19 They have to keep our take. They need more money? They have
- 20 to pay the driver more money. We don't argue with that. And
- 21 we have more pressure to get the money and we push them to get
- 22 more money and we [indiscernible] to get that money. We get
- 23 more tickets and we like [indiscernible] customers. We do all
- 24 of the stuff, not good things, and that is because of our
- 25 company.

- 1 So, they are not making a solution for this problem.
- 2 Q So when you said income to keep going up and up, whose
- 3 incomes were you talking about?
- 4 A All of the companies. Because if they say they need more
- 5 cab money, that means we need to have more -- maybe they have a
- 6 hundred cabs, so they will -- they making money, so they need
- 7 more money.
- 8 Q Now, how many drivers spoke up at this meeting?
- 9 A I don't know, a lot of drivers, but from Nellis Cab, I was
- 10 the only one.
- 11 Q So you were the only driver. Was there anybody else from
- 12 Nellis Cab there?
- 13 A Yeah.
- 14 Q And, I'm sorry, were there anybody else from Ellis Cab,
- 15 other than drivers, that spoke at the meeting?
- 16 A After I left, I think my monitor was speak, but I am not
- 17 there, because afterwards, I have to be there at 12:00 for my
- 18 shift.
- 19 It was a lot of crowd from all of the drivers. Even two
- 20 or three times, I think the meeting was stopped because of the
- 21 drivers, more anger, more -- even some drivers, yelling, "I
- 22 will burn down the company," or something. A lot of angry
- 23 things -- explained the income and how it was suffering about
- 24 the economy and the cab industry and everything.
- 25 Q The drivers were angry. Were there any fist fights?

- 1 A No fist fights. I think one was cautioned by the TA. I
- 2 don't know why he -- I think the Desert -- the Desert owner, he
- 3 got [indiscernible] the drivers, we are all there, but he tried
- 4 to speech about the drivers. We are the drivers. So, he tried
- 5 like to explain his own driver, his benefit, his riders is
- 6 going up, and he -- all of the money the drivers have is
- 7 [indiscernible] and that is why he asked for money. So the
- 8 drivers weren't there -- that is not true. That is why
- 9 everybody is angry, everybody is up from the chair, and they
- 10 take him out and the meeting was stopped.
- 11 Q Okay. So, other than Nellis drivers, were there -- about
- 12 how many drivers spoke up at the meeting if you know?
- 13 A I don't exactly remember, but it was more than 25 or 30 I
- 14 think.
- 15 Q Now, what -- what, if anything, did Nellis tell you about
- 16 accidents during the past year that you worked there?
- 17 A Nothing new. Every time we join the meeting, we have
- 18 [indiscernible] three or four safety meetings, so I think we
- 19 are the safe drivers from Las Vegas. Every time we talk with
- 20 Jim or Larry or anyone before the safety committee.
- 21 Q I'm sorry, can you repeat that?
- 22 A We the safest drivers, yeah, because our accident is lower
- 23 than that of other companies.
- 24 Q And were you in an accident in April of this year?
- 25 A Yes.

- 1 Q And do you remember the date of your accident?
- 2 A In April, yeah. That was on a Friday, April 20.
- 3 Q And tell me about what happened in the accident.
- 4 A Okay. I was heading to the airport, eastbound on
- 5 Tropicana, and making a right to go to the airport, and
- 6 [indiscernible] happened when I was making the turn, the other
- 7 car was from Virgin Valley, I think, maybe he missed his lane
- 8 or something, he just cut into me right into my lane, so I
- 9 tried to change my lane and go straight, and by the time I pass
- 10 him, I hear some [indiscernible] noises, so I stop, and he rub
- 11 me on the side like about -- between my back passenger on
- 12 driver's side, and gas cap. In the middle of there
- 13 [indiscernible] so I stop and I called Dispatcher and she asked
- 14 me -- I gave her the other cab number and the plate number, so
- 15 I go outside and see his number and his plate number, and I
- 16 called and she told me, everybody is on a call, so wait out
- 17 there. So I go outside and looking at everything, and it is
- 18 good and nothing, but I [indiscernible] a place between the
- 19 door and the gas cap, so I look at his car, and it is the same
- 20 thing he has, so I wait there for the Taxi Authority to show
- 21 up.
- 22 So he pull to the side because we blocking the traffic, so
- 23 he go to the side and then he grabbed all of our paperwork,
- 24 like our permits and everything, and he look around and -- he
- 25 return all papers and he say , "You guys, I didn't see any

- 1 damage, so I guess come back to work and he left. So the
- 2 supervisor was there, August, and the other company, so the
- 3 supervisors came and they took a picture of mine, and both
- 4 supervisors take mine, and his car -- took a picture, and I
- 5 fill out the incident report, and the supervisor told me to
- 6 wait for the insurance guy and the insurance guy show up, and
- 7 he ask me a lot of question, and [indiscernible] for him, and
- 8 after that -- yeah, August, [indiscernible] he did different
- 9 calls, phone calls, and after that, he came to me and he told
- 10 me to take the car and go, gather up and return to the yard,
- 11 and go home and call on Monday.
- 12 Q Now, you said he made some phone calls. Did you hear what
- 13 he was saying on the phone?
- 14 A No. It was a little bit far from me. The other side of
- 15 the car and I am on this side.
- 16 Q And I think you said you heard something when the cars --
- 17 A Yeah.
- 18 Q Did you say "squeak?"
- 19 A Yeah, squeaked; made a noise.
- 20 Q Okay. And so, let me see. Let me show you.
- 21 [Long pause]
- 22 O So, I have handed out these pictures marked General
- 23 Counsel's Exhibit No. 52 and 53.
- 24 (General Counsel's Exhibit No. 52 and 53, marked for
- 25 identification.)

- 1 Q BY MR. SMITH: Can you tell me what is in these pictures?
- 2 A Both of them? Or I start with 52?
- 3 Q Yes. Either one. You can start with 52 or 53.
- 4 A Okay, 52, that is my cab. This is the place --
- 5 Q I'm sorry?
- 6 A This right here, this is what the -- between the gas cap
- 7 and the door, that is where the scratchings happened.
- 8 Q Okay.
- 9 A That is the accident.
- 10 Q Now, how can you tell from that picture that that is your
- 11 cab?
- 12 A Oh, the little dent on the door, so that happened before.
- 13 I don't know who it was when that happened, and so because I
- 14 know this thing is in this scratch right here, at the door,
- 15 everything is from my cab, because we have to, like every day,
- 16 before we go out to work, we have to inspect our cabs.
- 17 So I know my cab every day. I go around and look, because
- 18 if I go outside and something has happened, I explain for that,
- 19 and that is my responsible.
- So, every day, we are told from the company, that we have
- 21 to check our cabs before we go out, and the second, also, the
- 22 same thing, I remember this scratch on my cab and the cab
- 23 medallions belong for 772, and that is No. 22 is the number for
- 24 my cab.
- 25 Q So, is the 722 --

- 1 A 772 is my cab number.
- 2 Q Okay. And what is this --
- 3 A And the 22. That is [indiscernible] for my cab number
- 4 every day, for 12:00 to 12:00 shift cabs.
- 5 Q Now, --
- 6 MR. SMITH: Your Honor, I would like to offer General
- 7 Counsel's Exhibit No. 52 and 53.
- 8 MR. WINKLER: I would like to ask a few questions before
- 9 we -- if I can voir dire?
- 10 JUDGE POLLACK: Go ahead.
- 11 **VOIR DIRE**
- 12 Q BY MR. WINKLER: I am -- on General Counsel's Exhibit No.
- 13 52, do you know who took this picture?
- 14 A Yes.
- 15 O Who?
- 16 A My friend.
- 17 Q What?
- 18 A My friend.
- 19 O Your friend?
- 20 A Yes.
- 21 0 Where?
- 22 A Huh?
- 23 Q Where? Where was the picture taken?
- 24 A Oh, the picture was taken by the gas station.
- 25 Q After -- how long after the accident?

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- 1 A I am not sure, but maybe a week.
- 2 Q About a week later?
- 3 A Yes.
- 4 [Long pause]
- 5 Q I'm sorry, who was your friend again? What was his name
- 6 that took the picture?
- 7 MR. SMITH: And, Your Honor, I would object to disclosing
- 8 his name unless there is some reason that we need to know the
- 9 name of who took a picture. The witness has already identified
- 10 what is in the picture, and I wouldn't want to risk someone
- 11 else that helped out, by taking a picture, especially in the
- 12 absence of the pictures -- since there were no pictures
- 13 provided in the subpoenaed documents.
- 14 MR. WINKLER: Well, we gave you what we had.
- 15 Q BY MR. WINKLER: The -- is there any -- there is no cab
- 16 number on these pictures; is that correct?
- 17 A Yes.
- 18 [Long pause]
- 19 MR. WINKLER: Well, I am going to object to the
- 20 introduction of the pictures. They -- it is not clear -- well,
- 21 it was taken a week after the act for one thing, and we don't
- 22 know who took -- we don't know what the cab number is, and we
- 23 don't know who took the pictures.
- 24 MR. SMITH: Your Honor, the witness has already --
- JUDGE POLLACK: Okay. Well, do the pictures reflect what

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- 1 the cab looked like after the accident?
- 2 THE WITNESS: Yes.
- JUDGE POLLACK: All right, I will receive them.
- 4 (General Counsel's Exhibit No. 52 and 53, received into
- 5 evidence.)
- 6 MR. SMITH: Thank you, Your Honor.
- 7 CONTINUED DIRECT EXAMINATION
- 8 Q BY MR. SMITH: Now, have you been in prior accidents
- 9 before at Nellis Cab?
- 10 A Yes.
- 11 Q And how -- what kind of discipline did you receive, if
- 12 anything, for the prior accidents?
- 13 A In my opinion, I didn't receive any discipline, because of
- 14 [indiscernible] most accidents happen on the weekends, so on
- 15 the weekend, the office is closed, so they can't make any
- 16 decision on that days.
- 17 So, if I happen something on Fridays, I have to call
- 18 Monday. So I think most accidents happen on Friday or
- 19 Saturdays. [indiscernible] that days, and I called on Monday
- 20 about my shift, it start at 12:00, so most of them I call at
- 21 11:00, so the supervisor he, "Okay, come into work."
- 22 O So was there any kind of warnings or anything that you had
- 23 received for any of the prior accidents?
- 24 A No, I didn't receive -- most of the other drivers were
- 25 receive, because mostly when an accident happen, I know my

- 1 friend has had an accident on that day, so when they had an
- 2 accident, they have to speak to Jaime, and he explain what
- 3 happen and if they have a warning or anything, they deal with
- 4 him, but I never got to see Jaime.
- 5 JUDGE POLLACK: How many accidents did you have before
- 6 this one?
- 7 THE WITNESS: I would say -- I am not sure of the number,
- 8 but over three years, maybe five or six.
- 9 JUDGE POLLACK: And when was the last one before this one?
- 10 THE WITNESS: Before this one, maybe a year ago, but in
- 11 the beginning of this year, I remember I had one in a
- 12 [indiscernible], accident. The ladies riding with me, but just
- 13 starting and making a turn, so she jump into my cab, so nothing
- 14 happened, and also I have a [indiscernible] because when you
- 15 have a cab, the new policy, when you have an accident, they
- 16 have a blue card that is in my cab, and so that is supposed to
- 17 be filled out by my passengers, so they fill out the things and
- 18 the TA came and my supervisors came on that day, and so I
- 19 filled out a paper, and after that, I just started right away
- 20 on my work. I go back to work.
- 21 JUDGE POLLACK: Okay.
- 22 Before this incident with this woman -- the pedestrian
- 23 that walked into your car, when was the last accident before
- 24 that?
- THE WITNESS: Maybe a year ago. Yeah. Maybe a year.

- JUDGE POLLACK: A year from when?
- THE WITNESS: Oh, from this accident on April 20.
- JUDGE POLLACK: Okay.
- 4 THE WITNESS: [indiscernible]
- 5 JUDGE POLLACK: Go ahead.
- 6 MR. SMITH: Thank you, Your Honor.
- 7 Q BY MR. SMITH: So had you been fired for any of the prior
- 8 accidents?
- 9 A No.
- 10 Q So when you said you were told to call back on Monday,
- 11 what happened on Monday?
- 12 A For this one?
- 13 Q For the last accident.
- 14 A Oh, for the last accident.
- So, I called in on Monday, at 11:00. My supervisor,
- 16 Osmel, he answered the phone. He say he didn't really see
- 17 anything from his boss, so he told me I have to call back at
- 18 1:00, and I wait and at 1:00 I called, and he answer again, and
- 19 he said he didn't receive anything from his boss, so he told
- 20 me, he will give me a call when he get something from his boss.
- 21 Around 4:00 -- between 4:00 and 4:30, I am not quite sure
- 22 of that, that day I received a call from him and he say, "I'm
- 23 sorry, they let you go," and I say, "No problem. What was the
- 24 reason?" He say, because of accident.
- 25 Q Okay, what else was said in the conversation?

- 1 A He told me the accident, and I asked him, "Okay, can I get
- 2 some paper that explains I get fired for one accident, and
- 3 everything."
- 4 He say, "We never give anyone any paper from Nellis. Just
- 5 tell the company or anyone that you get fired for accident,"
- 6 and I asked him to mail me my personnel file, and he told me,
- 7 "I don't think so, we give the personnel file, but let me check
- 8 and I will give you a call," so he left me a message after
- 9 that, so a lot of the message say, "The personnel file has been
- 10 moved to the company." So, unless, I get any court order, I
- 11 couldn't get it.
- 12 Q So, was there any more conversations you had with Nellis
- 13 after that?
- 14 A After that, I just get a call to grab my last pay check,
- 15 and after that, I just try to [indiscernible] sent to them to
- 16 ask for Human Resources to ask again for my personnel file.
- 17 Q Now, when -- when you did the long break, was -- did any
- 18 fights break out during the long break that you saw?
- 19 A You mean, a fight?
- 20 Q Yeah.
- 21 A No.
- 22 [Long pause]
- 23 MR. SMITH: Okay, no further questions, Your Honor.
- JUDGE POLLACK: All right, before we break for the
- 25 evening, why don't you turn over the affidavits so they can

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- 1 review it tonight, and we won't have to wait tomorrow morning.
- 2 MR. SMITH: Yes, Your Honor.
- JUDGE POLLACK: Is that okay with you, Mr. Winkler?
- 4 MR. WINKLER: That will be fine.
- 5 JUDGE POLLACK: Okay, that is all for tonight.
- 6 We need you here tomorrow morning for questioning by the
- 7 Company attorney.
- 8 THE WITNESS: Okay, what time?
- 9 JUDGE POLLACK: At 9:00.
- 10 THE WITNESS: Okay. I will be here.
- 11 MR. SMITH: And, Your Honor, if I could just -- for the
- 12 record, I am giving Mr. Winkler, an affidavit from Mr. Amede
- 13 that is five pages dated May 11th, 2012, and the same caption
- 14 as this case.
- 15 JUDGE POLLACK: Okay.
- All right, we will adjourn for the evening, and we will
- 17 resume tomorrow at 9:00. Please be on time.
- 18 MR. SMITH: Thank you.
- 19 MR. WINKLER: Thank you.
- 20 (Whereupon, the hearing was recessed at 5:30 p.m., until 9:00
- 21 a.m. on September 26, 2012.)

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